No. 21-1271

In the Supreme Court of the United States

TIMOTHY K. MOORE, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES, ET AL.,
Petitioners,
v.

REBECCA HARPER, ET AL.,
Respondents.

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

BRIEF IN OPPOSITION BY STATE RESPONDENTS

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QUESTION PRESENTED

Whether it violates the Elections Clause for a state court to review a congressional districting map and, if necessary, impose a new one, when the state legislature has prescribed a process that expressly provides for such a judicial role.

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INTRODUCTION

Recently, several members of this Court have signaled their openness to granting a case involving the Elections Clause—including this one. *See, e.g.*, *Moore v. Harper*, 142 S. Ct. 1089, 1089 (2022) (Kavanaugh, J., concurring in denial of stay); *Republican Party of Pa. v. Degraffenreid*, 141 S. Ct. 732, 733 (2021) (Thomas, J., dissenting from denial of certiorari); *id.* at 738 (Alito, J., dissenting from denial of certiorari). According to those Justices, this Court's precedents have never resolved the extent to which nonlegislative officials can "t[ake] it upon themselves to set the rules" governing federal elections. *Republican Party of Pa.*, 141 S. Ct. at 732 (Thomas, J., dissenting from denial of certiorari).

Granting this case will not help resolve that question. Two decades ago, the North Carolina General Assembly passed a law expressly codifying the state courts' authority to review legislative redistricting efforts. N.C. Gen. Stat. § 1-267.1. At the same time, the legislature specifically authorized the state courts to "impose an interim districting plan" in situations like the one giving rise to this appeal. *Id.* § 120-2.4(a1). The North Carolina state courts thus have not "t[aken] it upon themselves to set" federal-elections rules—*the state legislature itself* designed a statutory redistricting regime that expressly contemplates the courts' involvement.

This distinction matters. Petitioners' entire argument hinges on the notion that when the Elections Clause refers to "the Legislature," it means

the State's representative body. Yet even if Petitioners' textual argument were correct, *they would still lose this case*. Here, it *was* the State's representative body that prescribed rules for federal elections that expressly provide for state court review. Petitioners cannot overcome this threshold problem.

Nor can Petitioners identify any other basis for this Court's intervention. At bottom, they seem to take the position that the Constitution forbids state legislatures from choosing to delegate *any* of their Elections Clause authority to other actors. Yet no court—state or federal—has ever interpreted the Elections Clause that way. It is therefore not surprising that Petitioners' efforts to manufacture a split fall short.

The decision below was also correct on the merits. The state supreme court adopted a reading of the Elections Clause that is faithful to its text, this Court's precedents, the historical record, and basic principles of federalism. And the court avoided the chaos that Petitioners' position would wreak, including the potential invalidation of the elections regimes in all fifty States.

Finally, Petitioners ignore the range of vehicle problems inherent in this case. Most notably, proceedings remain ongoing in the state supreme court. Those proceedings could significantly alter the scope of this case before this Court could decide it, including by altering whether it even involves a court-imposed congressional map.

For all these reasons, this Court should deny certiorari and wait for a case that actually implicates the Elections Clause question that several Justices on this Court have previously raised.

STATEMENT OF THE CASE

A. The General Assembly has expressly authorized nonlegislative actors to help regulate federal elections.

In North Carolina, the General Assembly bears primary responsibility for the State's election laws. But the General Assembly has not attempted to wield *exclusive* authority. Instead, it has expressly chosen to share authority, delegating certain powers over rules governing federal elections to nonlegislative actors.

To begin, the General Assembly has authorized the State Board of Elections to regulate and administer elections, including federal elections, in numerous ways. Specifically, the State Board has the "authority to make . . . reasonable rules and regulations with respect to the conduct of primaries and elections . . . so long as they do not conflict" with other state-law provisions. N.C. Gen. Stat. § 163-22(a). For example, the General Assembly has authorized the State Board to promulgate specific types of elections regulations, including regulations prescribing the "minimum requirements for the number of pollbooks, voting machines and curbside ballots to be available at each precinct"; standards for certifying voting machines; procedures for registering voters and maintaining voter rolls; standards for issuing photo IDs; and procedures for counting ballots, reporting results,

conducting recounts, and adjudicating election protests. *Id.* §§ 163-22(n), -82.8A(d), -82.11(d), -82.26, -165.3(c), -165.7(a), -166.7(c), -166.10, -182.2(b), -182.7(d), -182.10(e).

The General Assembly has also authorized the State's 100 county boards of elections to perform a comparable role at the local level. *See id.* §§ 163-30, -33. For example, the General Assembly has authorized county boards to identify polling sites and to establish certain hours of operation at those sites. *Id.* § 163-227.6.

The General Assembly has ratified the involvement of other nonlegislative actors as well. Under North Carolina law, the state courts have express authority to review election maps. *See id.* §§ 120-2.3, -2.4. This includes the power to review challenges to congressional districting plans.

The General Assembly has established rules governing such challenges: First, the General Assembly has specified that all such challenges must be "heard and determined by a three-judge panel" in Wake County, where the State's capital is located. *Id.* § 1-267.1(a); *see also id.* § 1-81.1(a) (similar).

Second, the General Assembly has imposed a requirement that any state court that holds any "State legislative or *congressional* district[ ]" "unconstitutional or otherwise invalid" must make findings of fact and conclusions of law identifying "every defect . . . , both as to the plan as a whole and as to individual districts." *Id.* § 120-2.3 (emphasis added).

Third, the General Assembly has provided a remedial process for unlawful congressional maps and has specifically acknowledged the courts' role in that process: Initially, the General Assembly itself must have the opportunity to "remedy any defects identified by the court." *Id.* § 120-2.4(a). If the General Assembly fails to do so, the court may "impose an interim districting plan . . . to the extent necessary to remedy any defects." *Id.* § 120-2.4(a1). Any court-imposed plan will apply "in the next general election only." *Id.* After that election, the General Assembly will enact new maps.

B. Consistent with this statutory regime, the North Carolina courts evaluated the State's new congressional map for constitutional compliance.

After every decennial census, the North Carolina General Assembly must revise the State's legislative districts and apportion representatives among those districts. N.C. Const. art. II, §§ 3, 5. Consequently, in November 2021, the General Assembly enacted new congressional and state legislative maps. *See* 2021 N.C. Sess. Laws 173 (N.C. Senate map); 2021 N.C. Sess. Laws 174 (congressional map); 2021 N.C. Sess. Laws 175 (N.C. House of Representatives map). The enacted maps were to apply for the first time in the 2022 elections, beginning with the State's primaries in March. *See* N.C. Gen. Stat. § 163-1(b).

Shortly after the General Assembly enacted the maps, two sets of plaintiffs (the Harper Respondents and NCLCV Respondents, collectively "Private

Respondents") sued. Pet. App. 257a-259a; N.C. Gen. Stat. § 1-267.1(a); *see also id.* § 1-81.1(a). Private Respondents alleged that the maps were partisan gerrymanders violating four provisions of the North Carolina Constitution: the Free Elections Clause, the Freedom of Assembly Clause, the Free Speech Clause, and the Equal Protection Clause. Pet. App. 257a-259a; *see* N.C. Const. art. I, §§ 10, 12, 14, 19.

Private Respondents quickly moved for a preliminary injunction. Pet. App. 260a. A three-judge panel denied the motion, holding that Private Respondents were unlikely to succeed on the merits of their claims. Pet. App. 261a-262a, 264a-266a.

Private Respondents sought relief in the North Carolina Supreme Court. That court preliminarily enjoined the new maps, delayed the State's primary election until May, and remanded the case for expedited trial proceedings. Pet. App. 250a-251a.

Back in the trial court, Petitioners filed answers raising numerous defenses under state and federal law.[1] Pet. App. 22a-23a; *Harper v. Hall*, No. 413PA21 (N.C.), Record on Appeal, at 1356-1413, *available at* https://bit.ly/3OOYmil. Although Petitioners had raised the federal Elections Clause in their brief opposing Private Respondents' motions for a preliminary injunction, Pet. App. 325a-327a, Petitioners did not assert any defense involving that

[1] The Common Cause Respondents successfully intervened in the case at this point. Pet. App. 21a.

Clause in their answers or otherwise pursue such a defense on the merits at trial.

The trial court oversaw expedited discovery and a trial. Pet. App. 23a-24a. After trial, the court made "factual findings confirm[ing Private Respondents'] assertions that each of the three enacted maps were 'extreme partisan outliers' and the product of 'intentional, pro-Republican partisan redistricting.'" Pet. App. 24a; *see also* Pet. App. 43a-47a. Nevertheless, the trial court held that "claims of extreme partisan gerrymandering present purely political questions that are nonjusticiable under the North Carolina Constitution." Pet. App. 48a. The trial court therefore upheld the enacted maps. Pet. App. 57a.

Private Respondents again appealed directly to the North Carolina Supreme Court. After briefing and oral argument, that court found that all of the trial court's factual findings were "supported by competent evidence." Pet. App. 228a. Based on those factual findings, the court held that the General Assembly had "enacted districting maps . . . that subordinated traditional neutral redistricting criteria in favor of extreme partisan advantage." Pet. App. 8a. The court thus held that the enacted maps were unconstitutional partisan gerrymanders, in violation of the Free Elections Clause, the Freedom of Assembly Clause, the Free Speech Clause, and the Equal Protection Clause of the state constitution. Pet. App. 11a-12a, 91a-106a.

In their brief to the state supreme court, Petitioners argued that the federal Elections Clause barred the court's review of the congressional map. Pet. App. 313a-315a. But the North Carolina Supreme Court found that Petitioners had forfeited any Elections Clause argument because it "was not presented at the trial court." Pet. App. 121a; *accord* Pet. App. 22a-23a (listing the affirmative defenses Petitioners presented to the trial court, which did not include the federal Elections Clause). The court went on to explain that, in addition to this forfeiture, Petitioners' Elections Clause argument was "repugnant to the sovereignty of states, the authority of state constitutions, and the independence of state courts." Pet. App. 121a.

Ultimately, the state supreme court reversed the trial court's judgment and remanded the case for remedial proceedings. Pet. App. 142. The court explained that, consistent with state law, the General Assembly would have "the opportunity to submit new congressional and state legislative districting plans that satisfy all provisions of the North Carolina Constitution." Pet. App. 142a.

C. Consistent with state law, the trial court imposed a remedial map after concluding that the legislature failed to remedy the previous map's defects.

The General Assembly enacted three new maps in an effort to fix the defects that the state supreme court had identified and submitted the maps to the trial court. Pet. App. 275a; *see* N.C. Gen. Stat. § 120-2.4(a).

The trial court appointed three special masters to assist in evaluating the maps. Pet. App. 273a. The special masters found that the new state House and Senate maps complied with the state supreme court's opinion, but that the congressional map did not. Pet. App. 278a. The special masters therefore submitted their own proposed congressional map to the trial court. Pet. App. 289a; *see* N.C. Gen. Stat. § 120-2.4(a1). Private Respondents submitted proposed remedial maps as well. Pet. App. 288a-289a.

The trial court approved the General Assembly's new state House and Senate maps, but held that the legislature's congressional map violated the state constitution. Pet. App. 291a-293a. After finding that the special masters' congressional map was not similarly defective, the court adopted that map for use in the 2022 election. Pet. App. 292a-293a; *see* N.C. Gen. Stat. § 120-2.4(a1).

Both Petitioners and Private Respondents moved for temporary stays of the trial court's order and filed notices of appeal with the North Carolina Supreme Court. Private Respondents challenged the portion of the order adopting the General Assembly's remedial state House and Senate maps. Petitioners, meanwhile, challenged the portion of the order adopting the special masters' interim congressional map.

The state supreme court denied all parties' stay motions. Petitioners then sought a stay from this Court, which it denied. *Moore*, 142 S. Ct. at 1089.

The State held its primary elections on Tuesday, May 17, under the interim congressional map at issue here.

D. Despite ongoing proceedings in the state courts, Petitioners seek this Court's review.

The parties' appeals from the trial court's order on the remedial maps remain ongoing before the North Carolina Supreme Court. *Harper v. Hall*, No. 413PA21 (N.C.), Docket, *available at* https://bit.ly/3F8mh80. Briefing on the remedial maps will be filed, and oral argument will occur, later in 2022 or in 2023. Despite these ongoing proceedings, Petitioners now ask this Court to review the state supreme court's decision on the original congressional map and the trial court's decision adopting the special masters' interim congressional map. Pet. 5.

REASONS FOR DENYING THE PETITION

I. There Is No Split of Authority on the Question This Case Presents.

Petitioners begin by alleging that this Court should grant certiorari because the lower courts are divided over the Elections Clause's meaning. Pet. 17-23. Petitioners are wrong. The lower courts are not split on any question that this case implicates. This Court's intervention is therefore unnecessary. *See* Sup. Ct. R. 10.

To understand why Petitioners' "split" does not warrant this Court's review, it is important first to clarify the question that this appeal actually presents.

According to Petitioners, this appeal is about whether a state court can "usurp[ ]" a state legislature's "power to regulate federal senate and congressional elections." Pet. 14. This case, however, does not present that question.

In characterizing the state courts as "usurp[ers]," Petitioners elide a key fact: the state courts' actions in this case were part of a redistricting-review process that the North Carolina legislature itself designed and codified in statutes. The *legislature's* prescribed process directs actions challenging congressional redistricting plans to "three-judge panel[s] of the Superior Court of Wake County." N.C. Gen. Stat. § 1-267.1(a). As part of that process, the *legislature* expressly included court review of redistricting plans for constitutionality.[2] *See id.* §§ 120-2.3, -2.4. And the *legislature* confirmed that a state court may "impose its own substitute [redistricting] plan," so long as it "first gives the General Assembly a period of time to remedy any defects" in the initial plan. *Id.* § 120-2.4. In short, the state courts in this case did not override the legislature's prescribed elections regime, as Petitioners suggest—they diligently followed it.

Against that backdrop, Petitioners' framing of the case falls flat. Petitioners overreach in claiming that

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[2] In their stay-application briefing, Petitioners insisted that these state statutes contemplate judicial review of *federal* constitutional challenges alone. Reply in Supp. of Appl. for Stay at 19-20, *Moore v. Harper*, No. 21A455 (U.S. Mar. 3, 2022). This contention is unmoored from the statutory text. Nothing in the text of these statutes limits judicial review to federal constitutional challenges.

this case raises hard questions about the Elections Clause and supposed state court aggrandizement. The question that this appeal presents is instead whether the Elections Clause bars state courts from reviewing congressional districting maps *even where the legislature itself has expressly authorized such review*.

There is no split of authority on that question. Petitioners cite no case that holds that state legislatures cannot delegate some portion of their elections authority to other state officials. *But see, e.g.*, *Bush v. Gore*, 531 U.S. 98, 121 (2000) (Rehnquist, C.J., concurring) (state legislatures can lawfully delegate their Article II elections powers and "expressly empower[ ]" other state "bodies" to help "carry out [their] constitutional mandate"); *Growe v. Emison*, 507 U.S. 25, 32-35 (1993) (approving state court's redistricting efforts that were carried out under a statutory delegation, *see Cotlow v. Grove*, 622 N.W.2d 561, 563 (Minn. 2001)). And, as far as State Respondents are aware, no such case exists.

Petitioners instead focus primarily on three cases that all answer different questions. Pet. 17-20 (citing *Carson v. Simon*, 978 F.3d 1051 (8th Cir. 2020) (per curiam); *State ex rel. Beeson v. Marsh*, 34 N.W.2d 279 (Neb. 1948); *In re Plurality Elections*, 8 A. 881 (R.I. 1887)). None of these cases supports this Court's review.

Petitioners first raise *Carson*. Pet. 17-18. There, the Minnesota Secretary of State entered a consent decree that extended the State's absentee-ballot receipt deadline for the 2020 election. *Carson*, 978

F.3d at 1055-56. The Eighth Circuit invalidated the Secretary's actions, holding that the Minnesota legislature had not "authorize[d] the Secretary to override the Legislature's ballot deadlines." *Id.* at 1060. In so holding, the court rejected the Secretary's argument that a Minnesota statute empowered him to "adopt alternative election procedures" in certain circumstances. *Id.*

This state-law analysis readily distinguishes *Carson* from this case, where the North Carolina General Assembly has explicitly authorized the state courts to review its redistricting work. In fact, *Carson* expressly declined to consider the question that granting this case would require this Court to answer—namely, whether the Constitution forbids state legislatures from delegating any of their elections authority. *Id.* ("[W]e do not reach" the question whether "the Legislature's Article II powers concerning presidential elections can be delegated."). *Carson* is, thus, a curious case for Petitioners to cite as their best evidence of a certworthy split.

Petitioners next turn to a supposedly "long line" of state-court cases. Pet. 18. But Petitioners highlight only two cases—*Marsh* and *Plurality Elections*—and they are readily distinguishable for much the same reason as *Carson*: neither *Marsh* nor *Plurality Elections* is a case where the state legislature had *authorized* other state entities to be involved in elections decisions. Pet. 19 (citing *Marsh*, 34 N.W. 2d at 246; *Plurality Elections*, 8 A. at 882).

There is at least one more reason to disregard these cases: *Marsh* and *Plurality Elections* were decided in 1948 and 1887, respectively. Pet. 18-19. The age of these decisions alone casts doubt upon Petitioners' assertion that disagreement over the Elections Clause "has become increasingly intolerable." Pet. 17. To the contrary, even accepting Petitioners' characterization of *Marsh* and *Plurality Elections*, any conflict these cases might create would seem to be stale, at best. At worst, these opinions are obsolete, given the opinions that this Court has issued since. *See infra* Part II.B.[3]

Finally, Petitioners cite two dissenting opinions. Pet. 20 (citing *Wise v. Circosta*, 978 F.3d 93 (4th Cir. 2020) (en banc) (Wilkinson & Agee, J.J., dissenting);

[3] Petitioners cite three other cases in passing: *Parsons v. Ryan*, 60 P.2d 910 (Kan. 1936); *In re Opinions of Justices*, 45 N.H. 595 (1864); and *Commonwealth ex rel. Dummit v. O'Connell*, 181 S.W.2d 691 (Ky. 1944). Pet. 19-20. The short shrift that Petitioners give these outdated cases is commensurate to their relevance. Not one of them involves a scenario like this one, where the state court was reviewing a state law under a legislatively prescribed regime. Moreover, in both *Parsons* and *Opinions of Justices*, the courts avoided directly resolving the issue of whether state legislatures can flout state constitutions, either because the parties did not raise it, *see Parsons*, 60 P.2d at 911-12, or because the court found that there was no conflict between the challenged state statute and the state constitution, *see Opinions of Justices*, 45 N.H. at 605. In *Dummit*, the court did seem to imply that state legislatures are not bound by substantive state constitutional provisions, but it emphasized that it "possess[ed] no certainty" about that prospect. 181 S.W.2d at 696. In short, none of these opinions gives rise to a split on the question presented by this case.

Hotze v. Hudspeth, 16 F.4th 1121 (5th Cir. 2021) (Oldham, J., dissenting)). That Petitioners resort to citing dissenting opinions only underscores the dearth of support for their so-called split. And these dissenting opinions are especially unhelpful for Petitioners. First, they say nothing to validate the existence of a split. If these dissenting judges had believed that they were involved in a percolating split, they would likely have said so. Second, in both opinions, the dissenters tied an Elections Clause violation to what they perceived as "a 'significant departure' from the election scheme enacted by the Legislature." *Hotze*, 16 F.4th at 1128 (Oldham, J., dissenting) (quoting *Bush*, 531 U.S. at 113 (Rehnquist, C.J., concurring)); *Wise*, 978 F.3d at 113 (Wilkinson & Agree, J.J., dissenting) (same). Again, no such "significant departure" happened here: as discussed, the state courts' actions were consistent with the scheme that the North Carolina legislature itself enacted.

II. The Decision Below Was Correct.

This Court's review is also not warranted because the North Carolina Supreme Court's interpretation of the Elections Clause was correct. Under any reading of the Elections Clause's text—including Petitioners'—the actions of the North Carolina courts were constitutional. The decision below was consistent with this Court's precedents, the historical record, and basic principles of federalism. And the court adopted the only reading of the Elections Clause that would avoid sweeping—and hugely disruptive—practical consequences.

A. Even under Petitioners' reading of the Elections Clause's text, the court below was correct.

The Elections Clause provides that the "Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . . ." U.S. Const. art. I, § 4, cl. 1. Petitioners argue that the word "Legislature" necessarily refers to "'the representative body which ma[kes] the laws of the people.'" Pet. 27 (quoting *Hawke v. Smith*, 253 U.S. 221, 227 (1920)) (alteration in original). Hence, Petitioners contend, the General Assembly should "bear primary responsibility for setting election rules." *Id.* (quoting *Democratic Nat'l Comm. v. Wisc. State Legislature*, 141 S. Ct. 28, 29 (2020) (Gorsuch, J., concurring in denial of application to vacate stay)).

The most obvious problem with this textual argument is that even if it is correct, *Petitioners should still lose this case*. As described above, the role that the North Carolina judiciary plays in the State's redistricting is an explicit part of the process prescribed by the State's "representative body," the General Assembly. *See supra* pp. 4-5 (citing N.C. Gen. Stat. §§ 120-2.3, -2.4). In other States, a state-court decision imposing court-drawn maps might clash with the elections regime prescribed by the State's "representative body." But not in North Carolina. In North Carolina, the "Legislature" "prescribed" the rules for federal elections by passing statutes that expressly provide for state courts to review—and, if

necessary, to redraw—congressional maps. *See* U.S. Const. art. I, § 4, cl. 1.[4]

B. This Court's precedents foreclose Petitioners' arguments, as the court below rightly recognized.

The decision below was also consistent with this Court's precedents. The legislature in North Carolina has expressly invited the state courts to review its redistricting efforts for constitutional compliance. As a result, Petitioners can win this case only if this Court holds not only that state legislatures cannot delegate rulemaking authority for federal elections to nonlegislative actors; *but also* that state legislatures can prescribe the rules for federal elections entirely unconstrained by their state constitutions and the state courts. These conclusions cannot be reconciled with this Court's past decisions.

1. This Court has already held that nonlegislative officials can help regulate federal elections.

Petitioners essentially argue that no state actors other than state legislators can play any role in setting the rules for federal elections and, thus, that the state courts' actions below violated the Elections

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[4] Petitioners seem to imply that the statutes ratifying judicial review of their redistricting efforts violate the State's nondelegation doctrine. Pet. 32-33. But this Court is plainly not the proper forum for that state-law argument. *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975) ("[S]tate courts are the ultimate expositors of state law . . . .").

Clause. Pet. 26-38. The state supreme court correctly rejected this argument.

In a line of cases dating back more than a century, this Court has consistently repudiated the idea that the Elections Clause categorically forbids the involvement of nonlegislative officials in regulating federal elections. In each of these cases, moreover, it was not the legislature, but rather the state constitution or the populace, who empowered nonlegislative actors to prescribe elections rules. This distinction severely undercuts Petitioners' argument. If it does not violate the Elections Clause for nonlegislative actors to prescribe elections rules *absent* legislative delegation or approval, it cannot possibly violate the Elections Clause for nonlegislative actors to prescribe elections rules *with* legislative delegation or approval.

To begin, in *Ohio ex rel. Davis v. Hildebrant*, this Court considered an Ohio state constitutional provision allowing citizens to reject by statewide referendum any law that the state legislature passed. 241 U.S. 565, 566 (1916). After voters rebuffed their state legislature's proposed congressional districting plan, the referendum was challenged in the Ohio Supreme Court as violating the Elections Clause. *Id.* at 566-67. The state supreme court rejected the challenge, and this Court affirmed. *Id.* at 567. The people's involvement in redistricting, this Court held, did not violate the Elections Clause. *Id.* at 570.

The Court similarly approved of a nonlegislative official's role in establishing federal elections rules in

Smiley v. Holm, 285 U.S. 355, 366 (1932). There, the Court considered whether Minnesota's governor could veto the state legislature's congressional districting plan. *Id.* at 363-64. The Minnesota Supreme Court held that the governor's veto violated the Elections Clause, but this Court reversed. *Id.* at 364. "Whether the Governor of the state, through the veto power, shall have a part in the making of state" election law "is a matter of state polity," the Court said. *Id.* at 368.

Although this Court decided *Hildebrant* and *Smiley* roughly a century ago, the Court recently applied these cases in *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015) ("*AIRC*"). In *AIRC*, the Court held that the Elections Clause permitted the people of Arizona to delegate congressional districting to an independent commission. 576 U.S. at 792-93. In so holding, the Court again confirmed that the Elections Clause does not strictly limit control over federal elections to legislative representatives. Indeed, as the Court noted, even the Arizona legislature—the plaintiff challenging the commission—conceded that it could lawfully have *chosen* to delegate its redistricting authority to nonlegislative officials. *See id.* at 814.

The Court based this holding, in part, on founding-era dictionaries, which, the Court said, "capaciously define[d] the word 'legislature'" to include "[t]he power that makes laws." *Id.* at 813-14 (quoting dictionaries from the late 1700s and early 1800s). Given these definitions, the Court expounded, "[f]or redistricting purposes . . . 'the Legislature' [does] not mean the

representative body alone." *Id.* at 805. Rather, it should be understood to sweep in all those whom the State has opted to involve in making law. *Id.*

Here, the General Assembly—the State's "representative body"—designed the State's elections regime, including authorizing the involvement of other government actors in the executive and judicial branches. *See supra* pp. 4-5. Together, *Hildebrant*, *Smiley*, and *AIRC* make clear that this approach is constitutional. The mere fact that nonlegislative actors play a role in determining the State's elections rules does not violate the Elections Clause. And because it was the legislature itself that chose to involve nonlegislative actors, this case does not present the entirely different question of whether nonlegislative actors can "t[ake] it upon themselves to set the rules" governing federal elections. *Republican Party of Pa.*, 141 S. Ct. at 732 (Thomas, J., dissenting from denial of certiorari).

Petitioners ignore *Hildebrant* entirely, strive to reconcile *Smiley*, and urge this Court simply to overrule *AIRC*. This strategy is not persuasive.

First, Petitioners claim that, even if *Smiley* permits nonlegislative actors to participate in rulemaking, it does not allow "the state courts, or any other organ of state government, the power to second-guess the legislature's determinations." Pet. 34. But *Smiley* reached the opposite conclusion. In *Smiley*, the Court held that the Elections Clause allowed a governor (*i.e.*, an "organ of state government") to veto

(*i.e.*, "second-guess") the legislature's congressional districting plan. 285 U.S. at 372-73.

Petitioners also argue that this exercise of gubernatorial veto authority in *Smiley* did not raise an Elections Clause problem because the executive veto was part of the lawmaking process, whereas judicial review cannot be. Pet. 34-35. As *Smiley* explained, however, the governor's veto is a "check" on state lawmaking. 285 U.S. at 368. That executive "check" on the legislature is no different from the judicial "check" that a state court applies when it exercises judicial review. Indeed, Petitioners concede as much. The gubernatorial veto in *Smiley*, they concede, "had, in effect, done *precisely* what the North Carolina Supreme Court[ ] . . . did here." Pet. 34.

Smiley also squarely disproves Petitioners' theory that because the Elections Clause says "Legislature," but not "Court," the Clause necessarily disclaims any role for state courts. Pet. 2. After all, the Elections Clause says nothing about governors; yet this Court nonetheless held that a governor, through his veto power, could still override a legislature's districting plan. *See Smiley,* 285 U.S. at 367-69.

Second, Petitioners mention that this Court could overrule *AIRC*. Pet. 30-31 n.4. But Petitioners have not explained why *AIRC* warrants reexamination under the ordinary stare decisis factors. And in any event, even overruling *AIRC* would not help Petitioners here. The four dissenting Justices in *AIRC* made clear that the Elections Clause violation that they identified arose from the fact that the state

legislature had been "cut out of [the congressional redistricting] process" entirely. *AIRC*, 576 U.S. at 841 (Roberts, C.J., dissenting). "[T]he state legislature need not be exclusive in congressional districting," the dissenters said, "but neither may it be excluded." *Id.* at 841-42. The North Carolina regime complies with this vision: the legislature and the courts work hand in hand to ensure that the State has constitutional congressional maps.

Petitioners' last resort is a case outside the Elections Clause context: *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019). According to Petitioners, *Rucho* shows that the Elections Clause "'assigns [redistricting] to the political branches,' not to judges." Pet. 29 (quoting *Rucho*, 139 S. Ct. at 2506). Petitioners misunderstand *Rucho*. Far from holding that the Elections Clause leaves no role for state courts, the Court in *Rucho* was unanimous that state courts would be able to review congressional districting plans under their state constitutions. 139 S. Ct. at 2507; *see also id.* (noting that the Court's decision did not "condemn complaints about districting to echo into a void"); *id.* at 2524 (Kagan, J., dissenting).

All told, this Court's cases show that the Elections Clause should not be read to prohibit all nonlegislative actors from having any role in regulating federal elections. And that is especially true where, as here, the state legislature itself was the source of the delegation of authority to make elections rules.

2. This Court has already held that legislatures are bound by their state constitutions when regulating federal elections.

Petitioners further argue that the court below was wrong to subject their maps to state constitutional review. In their view, state legislatures can set the rules for federal elections with no regard for their state constitutions. Petitioners are again mistaken, as many of these same precedents make clear, and as the court below rightly held.

Begin, once more, with *Hildebrant*. There, the state legislature tried to evade the state constitution's requirement that all state laws survive a referendum, if citizens proposed one. 241 U.S. at 566. This Court rejected the legislature's evasion effort. *Id.* at 570.

So, too, in *Smiley*. In that case, the Court disapproved of the state legislature's attempt to escape the gubernatorial check imposed by the state constitution. 285 U.S. at 363. Specifically, the Court held that redistricting "must [take place] in accordance with the method which the State has prescribed for legislative enactments." *Id.* at 367. In other words, the Elections Clause does not "attempt to endow the Legislature of the state with power to enact laws in any manner other than that in which the Constitution of the state has provided that laws shall be enacted." *Id.* at 368.

This Court reiterated that conclusion once more in *AIRC*: "Nothing in the [Elections] Clause instructs, nor has this Court ever held, that a state legislature

may prescribe regulations on the time, place, and manner of holding federal elections in defiance of provisions of the State's constitution." 576 U.S. at 817-18. In fact, this principle—that state constitutions bind state legislatures when they redistrict—was embraced *unanimously* in *AIRC*, including by the four dissenting Justices. *See id.* at 841 (Roberts, C.J., dissenting) ("'[T]he Legislature' is a representative body that, when it prescribes election regulations, may be required to do so within the ordinary lawmaking process . . . .").

Petitioners try to overcome these cases by citing *McPherson v. Blacker*, a case analyzing the Presidential Electors Clause. 146 U.S. 1 (1892). *McPherson*, Petitioners claim, shows that state legislative authority "to prescribe regulations for federal elections 'cannot be taken.'" Pet. 31 (quoting 146 U.S. at 35). But in addition to analyzing a different clause than the one at issue here, *McPherson* expressly states that "legislative power" is "limited by the constitution of the state." 146 U.S. at 7. That declaration is diametrically opposed to Petitioners' argument.

Finally, Petitioners argue that even if the Elections Clause permits state courts to review elections laws under *some* provisions of the state constitution, it does not permit state supreme courts to invalidate redistricting plans based on "vague state constitutional provisions." Pet. i, 36. This argument is little more than a plea for this Court to second guess a state supreme court's interpretation of its own state constitution. This Court should decline Petitioners'

invitation. *Memphis & Charleston R.R. Co. v. Pace*, 282 U.S. 241, 244 (1931) ("[T]his Court [is] bound by the decision of the State's highest court relating to the state constitution.").

3. This Court has already held that state courts may formulate congressional districting maps.

Lastly, Petitioners take special issue with the fact that a state court imposed a remedial congressional map after their interim map again failed constitutional review. But this action, too, was consistent with this Court's precedent.

Justice Scalia's decision for a unanimous Court in *Growe v. Emison* establishes that state courts may adopt remedial congressional districting plans. In *Growe*, a Minnesota state court held that the state's legislative and congressional districting plans violated the state and federal constitutions. 507 U.S. at 29. The state court then began to develop remedial maps. *Id.* at 29-30. As those efforts were underway, however, a federal district court enjoined the state-court proceedings and imposed remedial maps of its own. *Id.* at 30-31.

This Court held that the federal district court violated the Constitution by depriving the state of its "primary responsibility for apportionment of [its] federal congressional . . . districts." *Id.* at 34. Indeed, the Court in *Growe* faulted the district court for enjoining the state-court proceedings based on the "mistaken view that federal judges need defer only to the Minnesota Legislature and not at all to the State's

courts." *Id.* The Court further reaffirmed the "power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan." *Id.* at 33 (cleaned up).

Petitioners do not even cite *Growe* here, despite their repeated claim that the state trial court "compounded the constitutional error" by adopting its own remedial map. Pet. 37. Petitioners' specific contention about how the remedial congressional map was formulated—like their broader argument about the Elections Clause—is foreclosed by this Court's precedents and therefore was properly cast aside by the state trial court.

C. The decision below is consistent with the historical record.

The understanding of the Elections Clause accepted by the North Carolina Supreme Court is also more consistent with the historical record than Petitioners'.

Petitioners resist the idea that the Elections Clause permits delegation, whether to executive officials or to the courts. Pet. 27, 33. Yet "[t]he historical evidence shows that delegation was widely practiced in the decades following the founding." Mark S. Krass, *Debunking the Non-Delegation Doctrine for State Regulation of Federal Elections*, 108 Va. L. Rev. (forthcoming 2022) (manuscript at 4, 16), *available at* https://bit.ly/3Pkinh6. In fact, "[n]ine of thirteen states assigned profoundly consequential control over the 'Times' and 'Places' of elections to local officials like sheriffs or justices of the peace." *Id.*

at 5. As just one example: "Virginia sheriffs had plenary authority" to continue or adjourn elections as they saw fit. *Id.* They were also empowered to relocate voting from the county courthouse based on "contagious disease" or "danger of an attack from a public enemy." *Id.* (quoting 1818 Va. Laws 157-58 § 13); *see also id.* at 16-28 (summarizing the overwhelming historical evidence). Petitioners ignore this evidence, which is flatly inconsistent with their argument for overturning the decision below.

The same is true of the considerable historical evidence that state constitutions have constrained state legislatures' regulation of federal elections since the Founding.[5] These state constitutional provisions "have regulated nearly every aspect of federal elections, from voter registration and balloting to congressional redistricting and election administration." Weingartner, *supra*, at 3-4. Concededly, some of these provisions have applied to federal elections only implicitly. *See id.* at 38 (collecting provisions). But many have expressly applied to federal elections, whether they be from the

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[5] *See* Carolyn Shapiro, *The Independent State Legislature Claim, Textualism, and State Law*, 90 U. Chi. L. Rev. (forthcoming 2023) (manuscript at 8-9), *available at* https:// bit. ly/3PidrsP ("The original constitutions of at least five states required all elections to be conducted by ballot, instead of voice vote . . . ."). *See generally* Hayward H. Smith, *Revisiting the History of the Independent State Legislature Doctrine*, 53 St. Mary's L.J. (forthcoming 2022), *available at* https://bit.ly/3wt 12Lh; Michael Weingartner, *Liquidating the Independent State Legislature Theory*, 46 Harv. J.L. & Pub. Pol'y (forthcoming 2023), *available at* https://bit.ly/3w4XZsG.

1790s or today. *Compare, e.g.*, Del. Const. of 1792, art. VIII, § 2 (congressional representatives "shall be voted for at the same places where representatives in the State legislature are voted for, and in the same manner"), *with* Iowa Const. art. III, § 37 ("When a congressional district is composed of two or more counties it shall not be entirely separated by a county belonging to another district and no county shall be divided in forming a congressional district.").[6] Thus, Petitioners would have this Court conclude that States throughout the country have either willfully ignored or blithely misunderstood the Elections Clause. Such a conclusion defies reason.

D. Petitioners' argument defies bedrock principles of federalism.

Petitioners' argument is also fundamentally incompatible with bedrock tenets of federalism and democracy. Like virtually all legislative bodies, the General Assembly is a "creature[] born of, and constrained by," its constitution. *Bush*, 531 U.S. at 123 (Steven, J., dissenting). Though the General Assembly generally enjoys expansive power to "legislate on all matters," the North Carolina Constitution reserves a range of rights to the people of North Carolina upon which the legislature may not encroach. *Cooper v. Berger*, 822 S.E.2d 286, 299 (N.C. 2018); *Corum v. Univ. of N.C.*, 413 S.E.2d 276, 289-90 (N.C. 1992).

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[6] Petitioners would apparently have this Court invalidate all of these state constitutional provisions in one fell swoop.

Petitioners insist that the Elections Clause overrides this careful balance. In their view, it is not for the people of North Carolina to decide what their legislature can and cannot do. Nor does it matter whether the North Carolina Constitution identifies certain rights as sacrosanct. Instead, Petitioners would have this Court hold that, in the federal elections context, state legislatures are free to do as they please, with no regard for the limits on which the people of the State have conditioned their consent to be governed.

Petitioners' approach to the Elections Clause is also starkly inconsistent with the well-settled relationship between the federal and state constitutions. *See, e.g.*, *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 293 (1982) ("[A] state court is entirely free to read its own State's constitution more broadly than this Court reads the Federal Constitution."). Ordinarily, the federal Constitution is understood to "set[ ] a floor for the protection of individual rights," while state constitutions can go "above and beyond" to "safeguard" even more. *Amer. Legion v. Amer. Humanist Ass'n*, 139 S. Ct. 2067, 2094 (2019) (Kavanaugh, J., concurring). Petitioners would turn this scheme on its head. In their view, the Elections Clause essentially switches off every state constitution insofar as it relates to federal elections.

The Framers would not recognize this version of federalism. And Petitioners' position is all the more remarkable given the text of the Elections Clause, which says *nothing* to communicate an intent to abrogate any state's constitution.

The court below appropriately rejected Petitioners' reading of the Elections Clause, which profoundly disrespects state sovereignty.

E. Petitioners' reading would upend elections regimes in all fifty States.

Finally, because Petitioners' reading of the Elections Clause has never been the law, its adoption by this Court would wreak havoc across the country. State legislatures throughout the Nation have devised elections regimes that rely on other state officials to help regulate and administer federal elections. And for good reason: "Running elections state-wide is extraordinarily complicated and difficult." *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of stay applications). Elections officials must navigate "significant logistical challenges" that require "enormous advance preparations." *Id.* Petitioners' novel interpretation of the Elections Clause would upend States' sensible, good-faith efforts to mitigate these challenges and would result in endless headaches for election administrators. The court below was right to avoid this result. *Cf.* Nathaniel Persily et al., *When Is a Legislature Not a Legislature? When Voters Regulate Elections by Initiative*, 77 Ohio St. L.J. 689, 708 (2016) ("[T]he scope of the damage of a restrictive reading [of the Elections Clause] suggests that multiple actors in the political system have, for some time, believed that the Elections Clause did not prevent these kinds of regulations.").

Consider North Carolina. Our General Assembly has delegated the authority to issue certain rules governing elections to the State Board of Elections. *E.g.*, N.C. Gen. Stat. § 163-22(a). *See generally id.* ch. 163 (containing at least 40 grants of rulemaking authority to the state board). The Board has exercised this delegated authority to promulgate rules about election protests, handling of voting equipment, ballot layouts, recounts, photo ID requirements, and absentee-ballot delivery. *E.g.*, 08 NCAC 02 .0110 (election protests); 08 NCAC 06B .0103 (ballot arrangement); 08 NCAC 09 .0106-.0109 (recounts); 08 NCAC 17 .0101-.0104 (photo IDs); 08 NCAC 18 .0101 (absentee-ballot delivery).

It is unclear how North Carolina—or any other State—could successfully hold federal elections if these kinds of delegations are unconstitutional. State legislatures cannot realistically enact legislation addressing all of the "interstitial policy decisions" that elections require—particularly the kind of urgent decisions that arise every elections cycle because of unforeseen contingencies. *See Cooper v. Berger*, 809 S.E.2d 98, 112 n.11 (N.C. 2018); N.C. Gen. Stat. § 163-27.1(a) (granting the State Board's Executive Director "emergency powers to conduct an election . . . where the normal schedule . . . is disrupted by" "[a] natural disaster," "[e]xtremely inclement weather," or "[a]n armed conflict"). Are legislators from across North Carolina going to travel to Raleigh to pass laws adjusting voting sites and hours every time a hurricane hits during an election? Will they convene to determine whether and for how long polling-site

hours should be extended whenever there is a power outage or equipment glitch? These kinds of conundrums will plague every State if Petitioners' novel reading of the Elections Clause carries the day.

And this universal upheaval would not be the end of the practical problems that such a ruling would pose. Petitioners' position could complicate the role of state elections officials so severely that they might have to sever state and federal elections entirely. *Cf.* Shapiro, *supra*, at 4-5, 37-38 (elaborating upon these practical problems).

To illustrate, imagine that a state legislature passes a statute prohibiting persons convicted of a felony from voting until they have served their full criminal sentences. The law, on its face, would seem to apply to both state and federal elections. Now imagine that a state court holds that the law violates the state constitution. In Petitioners' view, that holding could apply only to state elections—the state court could have no say with respect to federal elections.

But this position gives rise to a logistical nightmare: If someone who has not yet finished their probation or parole term shows up to register to vote, what is an elections official to do? Register that voter for state contests alone? And how should an elections official respond when that individual later shows up at a polling place? Disregard any federal-contest votes the individual casts, but count the individual's state-contest votes? This kind of predicament could recur

every time a state election law is successfully challenged in state court.

Petitioners' approach to the Elections Clause seems destined to necessitate two entirely separate elections regimes—one for state and local elections and one for federal elections. The Constitution does not compel such chaos.

III. This Case Is a Poor Vehicle for Analyzing the Elections Clause.

Finally, this case is a poor vehicle for resolving the scope of the Elections Clause. Most notably, it does not even implicate the question that Justices on this Court have expressed interest in answering: whether the Elections Clause permits nonlegislative actors to seize undelegated authority to prescribe the rules for federal elections.

But there are two additional vehicle problems. First, the state supreme court had an adequate, independent state-law ground for denying Petitioners' Elections Clause argument, a fact that undermines this Court's jurisdiction. Second, Petitioners' appeal of the trial court's remedial order remains ongoing before the state supreme court and could complicate this Court's review.

A. An adequate, independent state ground exists for rejecting Petitioners' arguments.

This Court should deny certiorari because the court below rejected Petitioners' Elections Clause arguments on an independent state-law ground. This

Court lacks jurisdiction over appeals from state-court decisions that rest on state-law grounds. *Michigan v. Long*, 463 U.S. 1032, 1037-44 (1983).

Under North Carolina law, "[i]n order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion stating the specific grounds for the ruling the party desired the court to make." N.C. R. App. P. 10(a)(1). Additionally, the party must "obtain a ruling upon the party's request, objection, or motion." *Id.*

Here, as the court below rightly found, Petitioners did not comply with these preservation rules. Pet. App. 121a. Petitioners gave no indication during the merits stage of the litigation that they believed state-court review of the congressional districting plan would violate the Elections Clause. They did not raise the Elections Clause as an affirmative defense or move to dismiss the complaints against their congressional map. Nor did they raise their Elections Clause arguments during trial proceedings or mention the Elections Clause in their proposed findings of fact and conclusions of law.

Despite these omissions, Petitioners assert that they presented their Elections Clause arguments to the trial court "repeatedly." Pet. 25. And, indeed, Petitioners did raise their Elections Clause argument during both the preliminary injunction and remedial proceedings. But Petitioners cite no authority suggesting that raising an argument at pre- and post-merits proceedings satisfies North Carolina's appellate rules, and the state supreme court believed

otherwise. Moreover, the purpose of the appellate preservation rule is to afford reviewing courts the benefit of a trial court's considered judgment. *See Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co.*, 657 S.E.2d 361, 363-64 (N.C. 2008). Petitioners' failure to raise their Elections Clause argument during the merits stage deprived the trial court of the opportunity to consider Petitioners' novel theory.

Petitioners also argue that, even if they failed to preserve their Elections Clause argument, the state supreme court addressed the argument anyway. All this proves, however, is that the court below had an alternative *federal* basis for denying Petitioners' claims. It does not negate the existence of an adequate, independent state-law ground. *See Michigan*, 463 U.S. at 1041.

Finally, Petitioners suggest that the Court should ignore any procedural defects because "this case presents the Court with the opportunity to consider and resolve this important issue on plenary review." Pet. 25. But the "desire to decisively 'settle important disputes for the sake of convenience and efficiency' must yield to the 'overriding and time-honored concern about keeping the Judiciary's power within its proper constitutional sphere.'" *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2504 (2020) (Thomas, J., dissenting) (cleaned up).

B. Ongoing proceedings in the North Carolina Supreme Court could complicate this Court's review.

There is yet another reason for this Court to deny certiorari: Petitioners' appeal from the trial court's remedial order remains ongoing before the state supreme court. *Harper v. Hall*, No. 413PA21 (N.C.), Docket, *available at* https://bit.ly/3F8mh80. Those ongoing proceedings could substantially complicate this Court's review. Denying the petition, meanwhile, would not necessarily foreclose this Court's ability to consider Petitioners' Elections Clause arguments after final judgment. For that reason, denying certiorari for now is the more prudent course.

This Court may review only the "final judgments" of a State's highest court. 28 U.S.C. § 1257. "[A] state-court judgment must be final in two senses: it must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein." *Jefferson v. City of Tarrant*, 522 U.S. 75, 81 (1997). In other words, the judgment must be "the final word of a final court." *Id.*

Petitioners insist that this Court has jurisdiction because the Elections Clause issue "is the only determinative one left in the case," and it has been conclusively resolved. Pet. 25. But that is simply not true. Petitioners' appeal of the court-imposed map is currently pending before the North Carolina Supreme Court.

That court's final decision could complicate this Court's review in myriad ways. The state supreme court could, for example, agree with Petitioners that the trial court erred by ordering the 2022 elections to take place under the special masters' interim map. Such a ruling would moot Petitioners' challenge to the trial court's remedial order. Pet i (asking this Court to answer whether "a State's judicial branch may nullify" a congressional map "and replace" the map with one "of the state courts' own devising"). Alternatively, the court could reiterate that Petitioners failed to preserve their Elections Clause argument. If the court below were to elaborate upon Petitioners' preservation failures, that would only make the absence of jurisdiction here even more glaring. This range of possible outcomes counsels strongly against granting certiorari, whether or not the decisions below technically constitute final judgments under section 1257. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 477-83 (1975); *see also Seattle's Union Gospel Mission v. Woods*, 142 S. Ct. 1094, 1097 (2022) (Alito, J., concurring in denial of certiorari) (recognizing that questions about the finality of state-court judgments can complicate this Court's review and counsel against granting certiorari); *Gordon Coll. v. DeWeese-Boyd*, 142 S. Ct. 952, 955 (2022) (Alito, J., concurring in denial of certiorari) (same); *Carpenter v. Gomez*, 516 U.S. 981, 981 (1995) (Stevens, J., concurring in denial of certiorari) (similar).

Denying certiorari now, meanwhile, would not necessarily impair this Court's ability to later review the Elections Clause issues Petitioners raise. If the

state supreme court affirms the trial court's order, Petitioners could again seek this Court's review. Similarly, even if the state supreme court reverses the trial court, Petitioners could still ask this Court to consider whether the Elections Clause permitted the state courts to invalidate their original maps. Moreover, because Petitioners concede that the 2022 congressional elections will take place under the special masters' interim map, Pet. 4, Petitioners will suffer no prejudice from letting the ordinary appeals process play out.

Finally, there is no shortage of state-court litigation involving allegations that a nonlegislative state actor violated the Elections Clause by prescribing rules governing federal elections. Thus, even if these procedural hurdles doom Petitioners' claims, this Court will have ample opportunity to consider the same arguments.

Those other cases, moreover, may well have far more significant stakes for the relevant State's elections. As North Carolina law mandates, and Petitioners acknowledge, the interim congressional map imposed below "is good for 2022 only." Pet. 4; *see also* N.C. Gen. Stat. § 120-2.4(a1). Accordingly, no matter what this Court decides, next year, the North Carolina legislature will be in the same practical position—drawing a congressional districting map for the 2024 election cycle.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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