

IN THE
Supreme Court of the United States

TIMOTHY MOORE, in His Official Capacity as Speaker of the North Carolina House
of Representatives, ET AL.,

Petitioners,

v.

REBECCA HARPER, ET AL.,

Respondents.

On Writ of Certiorari to the Supreme Court of North Carolina

**RESPONDENTS' JOINT MOTION FOR DIVIDED ARGUMENT AND FOR
AN ENLARGEMENT OF TIME FOR ARGUMENT**

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October 26, 2022

RULE 29.6 DISCLOSURE STATEMENT

Respondent Common Cause has no parent company nor does any public company have a 10 percent or greater ownership in it.

Respondent North Carolina League of Conservation Voters, Inc. (“NCLCV”) has no parent company, and no public company has a 10 percent or greater ownership in it.

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Pursuant to Rules 21, 28.3, and 28.4 of this Court, Respondents respectfully move for a divided oral argument and for an enlargement of time for argument. Respondents have conferred with counsel for Petitioners, who do not oppose Respondents' request for a divided argument. Petitioners also do not oppose an enlargement of argument time to 35 minutes per side, but oppose Respondents' request for 45 minutes per side.

At issue in this case is whether the Elections Clause nullifies state constitutional constraints imposed on state legislatures prescribing regulations for the time, place, and manner of holding congressional elections. This case arises from two consolidated cases involving four separate sets of respondents: Common Cause, the *Harper* plaintiffs, the North Carolina League of Conservation Voters, Inc. et al. (NCLCV) (collectively, the Non-State Respondents), and the State Respondents. In addition, the U.S. Solicitor General's office has filed an amicus brief in support of Respondents and a motion requesting argument time. Respondents respectfully request that their argument time be divided equally among (1) the Non-State Respondents, (2) the State Respondents, and (3) the U.S. Solicitor General's office. Respondents also request an enlargement of the argument time to 45 minutes per side.

A divided argument and additional argument time are appropriate for two reasons.

First, the Non-State Respondents and the State Respondents have different interests. The State Respondents have a paramount interest as representatives of

the State, given the implications that this case may have on the State's tripartite structure, its constitutionally mandated separation of powers, and the constitutional protections that its citizens enjoy. In addition, the State Respondents' brief focuses particular attention on the North Carolina statutes that authorize the state courts to hear redistricting challenges under the North Carolina Constitution and provide remedies for proven violations. The State Respondents have an interest in ensuring that these state laws are interpreted correctly.

The Non-State Respondents similarly have overriding interests. These voters and organizations brought this case as plaintiffs against the State of North Carolina to protect their legal interests in voting under a map that is not subject to partisan gerrymandering in violation of the North Carolina Constitution. The Non-State Respondents include Common Cause, which is a national nonprofit organization dedicated to fair elections across the country, and whose interests extend beyond North Carolina. The Non-State Respondents also include NCLCV, a non-partisan North Carolina organization affiliated with a national nonprofit organization—as well as individual North Carolina voters seeking to vindicate their individual rights to vote.

Finally, the United States has filed an amicus brief in support of Respondents and is seeking divided argument for the reasons stated in its motion.

Given the different parties with different interests, a divided argument and additional argument time is warranted. *See* Stephen M. Shapiro et al., *Supreme Court Practice* 777 (10th ed. 2013) (“Having more than one lawyer argue on a side is

justifiable . . . when they represent different parties with different interests or positions.”).

Second, the Non-State Respondents and the State Respondents emphasize different arguments and rely on different historical sources and authorities. The State Respondents place particular emphasis on the argument that this case can and should be resolved on the ground that the North Carolina General Assembly has affirmatively chosen to exercise its Elections Clause responsibilities in conformity with the North Carolina Constitution in the context of redistricting, and has authorized the state courts to enforce its compliance. The Non-State Respondents’ brief provides an extensive overview of historical sources and founding-era documents applicable nationwide and also advances an argument under 2 U.S.C. § 2a.

Given the different arguments and analysis by the Non-State Respondents and the State Respondents, a divided argument and additional argument time are warranted. Additional argument time is also warranted to allow this Court to hear argument on the extensive historical evidence and significant body of precedent discussed in Respondents’ briefing, which far exceeds a typical case before this Court.

This Court has regularly granted motions for divided argument when parties represent the distinct perspectives of government and private litigants. *See, e.g., Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, __ S. Ct. __ (Sept. 9, 2022) (No. 20-1199) (United States and private respondents); *Students for Fair Admissions, Inc. v. Univ. of North Carolina*, __ S. Ct. __ (Sept. 9, 2022) (No. 21-

707) (United States, state university respondents, and student respondents); *Trump v. New York*, 141 S. Ct. 870 (2020) (State of New York and private appellees); *Fulton v. City of Philadelphia*, 141 S. Ct. 230 (2020) (City of Philadelphia and private respondent); *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 398 (2019) (private respondents and state respondents); *Dep't of Com. v. New York*, 139 S. Ct. 1543 (2019) (government respondents and private respondents); *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 974 (2018) (state respondents and AFSCME Council 31); *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 466 (2017) (State of Colorado and private respondents).

The Court has also regularly granted motions for divided argument and extended argument time in complex election-law cases. *See, e.g., Merrill v. Milligan*, ___ S. Ct. ___ (Aug. 22, 2022) (Nos. 21-1086 & 21-1087); *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019); *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1237 (2019), *Abbot v. Perez*, 138 S. Ct. 1544 (2018); *Wittman v. Personhuballah*, 577 U.S. 1134 (2016); *Ala. Legis. Black Caucus v. Alabama*, 574 U.S. 969 (2014). This Court has likewise granted motions for divided argument in cases, like this one, that raise fundamental constitutional questions and that involve litigants with different perspectives. *See, e.g., Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, ___ S. Ct. ___ (Sept. 9, 2022) (No. 20-1199); *Students for Fair Admissions, Inc. v. Univ. of North Carolina*, ___ S. Ct. ___ (Sept. 9, 2022) (No. 21-707); *Fulton v. City of Philadelphia*, 141 S. Ct. 230 (2020); *Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 951 (2019).

Respondents thus respectfully request that the Court grant divided argument and additional argument time to ensure that the Court has an opportunity to explore at oral argument the full breadth of the arguments raised by Respondents in this important case.

Respectfully submitted,

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