

SUPREME COURT OF NORTH CAROLINA

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REBECCA HARPER; *et al.*,

Plaintiffs-Appellants,

v.

From Wake County

REPRESENTATIVE DESTIN HALL; *et al.*,

Defendants-Appellees.

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

Plaintiffs-Appellants,

v.

From Wake County

REPRESENTATIVE DESTIN HALL *et al.*,

Defendants-Appellees.

\*\*\*\*\*

**MOTION OF THE BRENNAN CENTER FOR JUSTICE AT N.Y.U. SCHOOL OF LAW FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFFS-APPELLANTS ON REHEARING**

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Pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure, the Brennan Center for Justice at N.Y.U. School of Law<sup>1</sup> (“the Brennan Center”)

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<sup>1</sup> Neither this motion nor the accompanying brief purport to represent the views of the N.Y.U. School of Law, if any.

respectfully requests leave to file an amicus brief in support of the Plaintiffs-Appellants in the above-captioned cases. The Brennan Center is conditionally filing its brief along with this motion.

### INTEREST OF AMICUS

Founded in 1995 to honor the extraordinary contributions of Justice William J. Brennan, Jr. to American law and society, the Brennan Center is a not-for-profit, non-partisan think tank and public interest law institute that seeks to improve systems of democracy and justice.

The Brennan Center seeks to bring the idea of representative self-government closer to reality, including by working to ensure fair and non-discriminatory redistricting practices and to protect the right of all Americans to vote. The Brennan Center conducts empirical, qualitative, historical, and legal research on redistricting and has participated in a number of voting rights and redistricting cases around the country in both state and federal court as amicus curiae.

The Brennan Center also works to realize a fair and independent judicial system that protects fundamental rights, democratic values, and the rule of law. Recognizing that state courts and state constitutions are critical sources of protection of rights and democratic institutions, the Brennan Center regularly produces research and resources about state constitutional developments, including in our recently launched publication, *State Court Report*. The Brennan Center also regularly participates as an amicus before the U.S. Supreme Court, federal circuit courts, and state appellate courts on these issues.

As recognized national experts on redistricting, constitutionalism, and the role of state courts, the Brennan Center's legal expertise bears directly on the question of whether this Court correctly ruled in this case that extreme partisan gerrymandering violates various of the deeply rooted democratic guarantees in the North Carolina Constitution.

### **REASONS WHY AN AMICUS BRIEF IS DESIRABLE**

The brief that the Brennan Center is conditionally filing with this motion will assist the Court by offering a national perspective on the unique and critical role that state constitutions play in the structure of American democracy, why state courts have a duty to enforce and give life to the broader democratic rights found in state constitutions, including limits on extreme partisan gerrymandering, and why the prudential concerns that underlay the U.S. Supreme Court's non-justiciability ruling in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), are inapplicable when it is state courts deciding issues under state law. The brief will also discuss how this Court's earlier decisions in this case are not outliers but consistent with decisions by a growing number of courts around the country who have similarly found and used judicially manageable standards for partisan gerrymandering to address abuses of the redistricting process by both Democrats and Republicans.

### **ISSUES TO BE ADDRESSED**

The Brennan Center seeks to address the following issues:

- Whether partisan gerrymandering claims are justiciable under North Carolina law even if they are not under the federal constitution.

- Whether reliable and judicially manageable standards exist for addressing extreme partisan gerrymandering.

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For these reasons, the Brennan Center respectfully requests that the Court allow this motion for leave and that the Court accept its conditionally filed amicus brief.

Respectfully submitted the 3rd day of March 2023.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on the 3rd day of March 2023, the foregoing was served upon all counsel of record via email.

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