

Jessica Ring Amunson
Tel +1 202 639 6023
JAmunson@jenner.com

May 11, 2023

Clerk of the Court
Supreme Court of the United States
One First Street, NE
Washington, DC 20543

Re: *Moore v. Harper*, No. 21-1271

To the Clerk of the Court:

The North Carolina League of Conservation Voters, Inc., et al. (NCLCV) Respondents in the above-captioned case herein respond to the Court's invitation to address the effect of the North Carolina Supreme Court's April 28, 2023 order on this Court's jurisdiction.

NCLCV Respondents respectfully submit that the North Carolina Supreme Court's April 28, 2023 order affirming the trial court's January 11, 2022 judgment dismissing all of plaintiffs' claims with prejudice has both divested this Court of any jurisdiction it otherwise was exercising under 28 U.S.C. § 1257(a) and rendered this case moot.

Prior to the North Carolina Supreme Court's April 28, 2023 ruling, a point of agreement among the parties was that because the time for rehearing the North Carolina Supreme Court's February 2022 judgment had long passed, *see* N.C. R. App. P. 31(a), only this Court could grant relief that would allow Petitioners' original 2021 congressional map to be used in future elections. In their brief on rehearing in the North Carolina Supreme Court, Petitioners recognized that the North Carolina Supreme Court's February 2022 injunction against using "the 2021 plans ... 'in any future elections'"—which they had asked this Court to reverse—"would not be vacated" by the North Carolina court. *Legis. Defs.' Supp. Br. on Reh'g* 56 (N.C. Feb. 17, 2023); *see id.* at 55 (requesting relief that "would not alter the Court's injunction against the 2021 plans"). Petitioners therefore asked the North Carolina Supreme Court only to "overrule" its February 2022 opinion, not to withdraw or vacate its February 2022 judgment. *Id.* at 3, 17, 30, 40, 55–57, 63, 65.

Petitioners then informed this Court that the February 2022 judgment on review in this Court was a "final judgment as to the use of the original map" and that "no further decision is possible in the North Carolina courts with respect to that judgment." *Pet'rs Ltr. Br. 2* (U.S. Mar. 20, 2023). Petitioners went on to explain that the North Carolina Supreme Court's

decision on rehearing will not undo the [February 2022] judgment in *Harper I*; the General Assembly's initial congressional map will not be revived. Indeed, as a matter of North Carolina law, the North Carolina Supreme Court cannot undo the judgment in *Harper I*. It cannot now rehear *Harper I* because the time for seeking rehearing of that judgment has long ago passed. A petition for rehearing must be filed within fifteen days after the mandate of the court has been issued, and the

Harper I mandate issued on February 24, 2022, by order of the North Carolina Supreme Court....

Harper I ... [is] simply beyond the reach of rehearing, and no party to this case has claimed otherwise. Rehearing ... thus could affect the state of the law in North Carolina moving forward, but it will not affect the finality of the decisions under review in this case.

Id. at 3–4 (citations omitted).

However, despite the apparent impossibility of doing so in accordance with state law, the North Carolina Supreme Court nonetheless *did* issue a further decision with respect to its February 2022 judgment. In its April 28, 2023 opinion, the North Carolina Supreme Court stated twice that it was “affirm[ing] the three-judge panel’s 11 January 2022 Judgment ... dismissing all of plaintiffs’ claims with prejudice.” *Harper v. Hall*, No. 413PA21-2, ___ S.E.2d ___, 2023 WL 3137057, at *3, *53 (N.C. Apr. 28, 2023). Thus, the North Carolina Supreme Court expressly “affirm[ed]” the very same judgment that its February 2022 judgment had reversed, even though the window for rehearing had long closed.

The effect of that affirmance is to render the February 2022 judgment on review to this Court a nullity. By “affirming” the trial court’s January 11, 2022 judgment and dismissing plaintiffs’ claims with prejudice, the North Carolina Supreme Court has now afforded Petitioners the relief they previously argued only *this* Court could provide, namely a reinstatement of their original 2021 congressional map.

Given these developments, NCLCV Respondents respectfully submit that the February 2022 judgment that Petitioners asked this Court to review cannot be a “[f]inal judgment[] or decree[]” giving rise to this Court’s jurisdiction under 28 U.S.C. § 1257(a). The North Carolina Supreme Court’s February 2022 judgment *reversing* the same January 11, 2022 trial-court judgment that the North Carolina Supreme Court just *affirmed* is now a nullity. And the case is moot, as there is no longer any relief this Court could provide that Petitioners have not already obtained from the North Carolina Supreme Court. Therefore, this Court lacks jurisdiction.

Sincerely,



Jessica Ring Amunson

cc: All counsel of record (via email)