



Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004

Neal Kumar Katyal
T +1 202 637 5600
F +1 202 637 5910
neal.katyal@hoganlovells.com

March 20, 2023

By Electronic Filing and Hand Delivery

Honorable Scott S. Harris
Clerk of the Court
Supreme Court of the United States
Washington, D.C. 20543

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

Dear Mr. Harris,

The Court asked the parties to address the effect of subsequent “proceedings” before the North Carolina Supreme Court on this Court’s jurisdiction. Those proceedings have no effect on the Court’s jurisdiction, and a dismissal of the Petition would be premature at best.

In February 2022, the North Carolina Supreme Court held in *Harper I* that the Elections Clause does not prevent the state courts from upholding the state constitution’s prohibition on partisan gerrymandering. *See* Pet. App. 1a-223a. The time to seek rehearing of that decision has long since expired. *See* N.C. R. App. P. 31(a) (petition for rehearing must be filed within 15 days). *Harper I* is currently the binding precedent of the North Carolina Supreme Court, and that decision is not subject to withdrawal. The North Carolina Supreme Court’s February 3, 2023 rehearing order in *Harper II* does not change that. *Harper I* is the state court’s “final judgment or decree” on the constitutional question before this Court, and this Court has jurisdiction to review it under *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975). *See, e.g., Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 54-55 (1989).

Cox addresses this Court’s jurisdiction when “the highest Court of a State has finally determined the federal issue present in a particular case, but in which there are further proceedings in the lower state courts to come.” *Cox*, 420 U.S. at 477 (emphasis added). Here, *Harper I* is a final determination of a federal issue in a “particular case.” This Court has an “unflagging obligation” to exercise its jurisdiction, *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976), and nothing in the “proceedings” has altered the Court’s jurisdiction at this

time. Speculation about what the North Carolina Supreme Court may do at some future point does not affect this Court's jurisdiction now, and it would be imprudent for this Court's future cases to open the door to such possibilities here. This Court can address any further decision by the North Carolina Supreme Court after further supplemental briefing, if appropriate.

At the time this Court granted certiorari in *Harper I*, the North Carolina courts had not yet determined which redistricting maps should apply to future elections. As Non-State Respondents have explained, this Court accordingly lacks jurisdiction to review that question. *See* Non-State Resp'ts' Br. 69. The rehearing order does not change that, either. The North Carolina Supreme Court issued its decision in *Harper II* on December 16, 2022, and Petitioners timely sought rehearing, which was granted on February 3, 2023. As a result, there is no final decision in *Harper II*.

Petitioners' position in this case is that state courts have *no role to play* in reviewing congressional redistricting maps. Regardless of how the state court resolves the state-law questions presented in *Harper II*, that question will remain live before this Court. And even if *Harper II* were to somehow render that question moot, this Court should still reach this crucial constitutional question, which is fully briefed and argued before this Court, and which is capable of repetition but has continued to escape this Court's review. The Court should, if at all possible, decide this question now, rather than on an emergency basis during the 2024 election cycle. All of that is why this Court should not dismiss this case at this point based on speculative possibilities that may not ever materialize.

BACKGROUND

1. In November 2021, the North Carolina General Assembly enacted new redistricting plans for the state House, state Senate, and Congress. Pet. App. 18a. Respondents challenged those maps in state court as unlawful partisan gerrymanders under the North Carolina Constitution.

In January 2022, the trial court held that all three maps were extreme partisan gerrymanders, but it concluded that partisan-gerrymandering claims are non-justiciable under the state constitution. Pet. App. 24a, 49a-53a. The North Carolina Supreme Court reversed. In *Harper I*, the court analyzed whether the Elections Clause "forbids state courts from reviewing a congressional districting plan" that "violates the state's own constitution." Pet. App. 121a. The court concluded that the Elections Clause permits state-court review, fully and finally resolving the only federal issue in the case. *See id.* The North Carolina Supreme Court separately analyzed whether the specific maps enacted by the legislature violated the state constitution. Pet. App. 122a-138a. The court answered that state-law question in the affirmative, and it "remand[ed]" to the trial "court to oversee the redrawing of the maps by the General Assembly or, if necessary, by the court." Pet. App. 142a.

Under North Carolina’s Rules of Appellate Procedure, Petitioners had 15 days to seek rehearing. *See* N.C. R. App. P. 31(a). Petitioners did not seek rehearing, and the North Carolina Supreme Court’s decision in *Harper I* became final as a matter of state law. After the time to seek rehearing expired, Petitioners filed a certiorari petition in this Court. In their reply brief in support of certiorari, Petitioners argued that this Court had jurisdiction over *Harper I* because “[n]o further decision is possible in the North Carolina courts” and “[t]his Court has jurisdiction to determine whether the North Carolina Supreme Court’s opinion and order invalidating the legislature’s original maps violates the Elections Clause.” Cert. Reply 1.

2. In addition to fully and finally resolving the federal Elections Clause issue, *Harper I* resolved the state-law question whether the specific maps enacted by the state legislature were extreme partisan gerrymanders prohibited by the North Carolina Constitution. The North Carolina Supreme Court remanded for further proceedings to determine which maps should be enacted in their place.

On remand, the North Carolina General Assembly enacted remedial legislative and congressional plans. In February 2022, the trial court approved the state House plan and the state Senate plan, but it held that the congressional plan was unconstitutional. Pet. App. 290a-293a, 278a-279a, 301a. The trial court modified the congressional map to bring it into constitutional compliance. Pet. App. 292a-293a. The trial court ordered that this remedial plan be used on an “[i]nterim” basis solely for the 2022 election, with the legislature to enact a new plan thereafter. *Id.*

Petitioners appealed that decision to the North Carolina Supreme Court. That appeal involved solely issues of state law; Petitioners’ briefing did not cite or discuss the Elections Clause. *See* Non-State Resp’ts’ Br. 13. When this Court granted certiorari in June 2022 to review *Harper I*, the proceedings before the North Carolina Supreme Court in *Harper II* were ongoing. After oral argument in this Court on the federal question presented by *Harper I*, the North Carolina Supreme Court issued its decision in *Harper II* addressing the state-law question of which remedial maps should govern future elections in North Carolina, remanding to the trial court for further proceedings. *See* 881 S.E.2d 156, 162 (N.C. 2022).

3. Petitioners sought rehearing. In their rehearing petition, Petitioners asked the North Carolina Supreme Court to “withdraw its *Harper II* opinion” and “overrule *Harper I*.” Pet. for Reh’g 3.¹ The North Carolina Supreme Court granted rehearing. Following the grant of rehearing, *Harper II* remains good law unless and until the North Carolina Supreme Court withdraws or modifies its decision in *Harper II*. *Harper I* is not subject to rehearing; it is the final decision of the North Carolina Supreme Court on the federal question presented here.

¹ Filings from the rehearing proceedings are available on the online docket, <https://bit.ly/3ZODH35>.

The parties have submitted their rehearing briefs, and the North Carolina Supreme Court held argument on March 14, 2023. The North Carolina Supreme Court has not yet issued its decision on rehearing.

ARGUMENT

Harper I represents the North Carolina Supreme Court's final determination of the federal issue this Court granted certiorari to resolve. *Harper II* is an ongoing state-court proceeding concerning state law and state law alone. *Harper II* was not final when this Court granted certiorari, and the North Carolina Supreme Court's decision to grant rehearing in *Harper II* does not affect this Court's jurisdiction under 28 U.S.C. § 1257(a) to review *Harper I*. By granting certiorari, this Court "necessarily considered and rejected" the argument that it lacked jurisdiction to review *Harper I* due to the ongoing remand proceedings before the North Carolina courts. *United States v. Williams*, 504 U.S. 36, 40 (1992). The fact that the North Carolina Supreme Court may choose to overrule *Harper I* at some future point does not affect the finality of that judgment or prevent this Court from reviewing it, just as this Court's grant of certiorari in a case where the question presented asks this Court to overrule one of its prior decisions does not render that prior decision any less binding on lower courts. This case is in precisely the same posture as when the Court granted certiorari. *Harper I* is a final decision subject to this Court's review, whereas the ongoing state-court proceedings in *Harper II* are not final and are not subject to this Court's jurisdiction. It may have been a different matter had Petitioners filed a rehearing petition in *Harper I*, but since the time for that has long elapsed, the decision is final.

A. This Court Has Jurisdiction Over *Harper I* Under *Cox*.

This Court "has recurrently encountered situations in which the highest court of a State has finally determined the federal issue present in a particular case, but in which there are further proceedings in the lower state courts to come." *Cox*, 420 U.S. at 477. "There are now at least four categories of such cases in which the Court has treated the decision on the federal issue as a final judgment * * * and has taken jurisdiction without awaiting the completion of additional proceedings anticipated in the lower state courts." *Id.* At least two of those categories apply here.

First, this Court has jurisdiction under the second *Cox* category, which applies when "the federal *issue*, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings." *Id.* at 480 (emphasis added). State court decisions falling into this category have "adjudicated" all the "federal questions [in the case] that could come" to this Court, while "the state proceedings to take place on remand 'could not remotely give rise to a federal question * * * that may later come here.'" *Florida v. Thomas*, 532 U.S. 774, 779 (2001) (quoting *Cox*, 420 U.S. at 480); *see, e.g., ASARCO Inc. v. Kadish*, 490 U.S. 605, 612 (1989) (finding jurisdiction because all federal questions "have been

adjudicated by the State court and the remaining issues * * * will not give rise to any further federal question” (quotation marks omitted)); *Am. Exp. Lines, Inc. v. Alvez*, 446 U.S. 274, 279 & n.7 (1980) (plurality op.) (holding that “[t]he fact that * * * other claims are nonfinal” “need not preclude” the Court “from considering the final determination” by a state high court on a specific claim).

In *Harper I*, the North Carolina Supreme Court fully decided the sole federal “issue” in this case: whether the Elections Clause prohibits state courts from enforcing state constitutional provisions that ban partisan gerrymandering. Once the time for seeking rehearing expired, that decision was “subject to no further review or correction in any other state tribunal” and was “final as an effective determination of the litigation” on that federal question. *Jefferson v. City of Tarrant*, 522 U.S. 75, 81 (1997) (citation omitted). *Harper I* is a “final judgment or decree” by a state high court; it is subject to review by this Court. *Cox*, 420 U.S. at 476-477 (cleaned up). North Carolina law confirms this. If, for example, a litigant were to cite *Harper I* in state court right now, it would be binding law. Notably, at this stage, that would be true even if *Harper I* were being reheard, which it is not. *See, e.g., Weisel v. Cobb*, 30 S.E. 312, 312 (N.C. 1898) (on rehearing, “every presumption is in favor of the judgment already rendered”); *Alford v. Shaw*, 358 S.E.2d 323, 328 (N.C. 1987) (withdrawing earlier decision during course of rehearing proceedings and holding that the earlier “decision is *no longer* authoritative and this opinion now becomes the law of the case” (emphasis added)).

The theoretical possibility that the North Carolina Supreme Court may at some uncertain future date adopt a different interpretation of the Elections Clause does not deprive this Court of jurisdiction. The finality of a state-court judgment “is not deferred by the existence of a latent power in the rendering court to reopen or revise its judgment.” *Market St. Ry. Co. v. R.R. Comm’n of State of Cal.*, 324 U.S. 548, 551 (1945). And although a grant of rehearing “open[s]” the “judgment,” *id.* at 552, the February 3 grant of rehearing *only* reopened *Harper II*—not *Harper I*. *Cox* asks whether a state high court has “finally determined the federal issue present in a particular case.” 420 U.S. at 477. The state court did that in *Harper I*, and *Harper I* remains the final law on the Elections Clause in North Carolina. Finality cannot turn on whether the state court may reach a different conclusion in some later proceeding. Otherwise, this Court would lose jurisdiction every time a litigant asks a state court to overrule an earlier decision on a federal question that is pending before this Court. That cannot possibly be the law.

There is no indication, let alone a certainty or even probability, that the North Carolina Supreme Court intends on rehearing of *Harper II* to revisit the federal question before this Court. The dissent in *Harper I* would have decided the case on state-law grounds. *See* Pet. App. 145a-223a. In their supplemental rehearing brief, Petitioners spent one paragraph describing their federal Elections Clause argument,

but did not ask the state court to overrule its prior interpretation of the Elections Clause. *See* Legis. Defs.’ Supp. Br. on Reh’g 49. The “remedies” section of their rehearing brief makes this clear: Petitioners asked the state court to overrule *Harper I* on the ground “that partisan gerrymandering claims are non-justiciable and non-cognizable.” *Id.* at 63. At oral argument before the North Carolina Supreme Court, Petitioners reiterated that they do not seek rehearing of *Harper I*; they instead asked the court to overrule “as precedent” the portion of *Harper I* holding that there are state-law “standards” to assess partisan gerrymandering. N.C. Sup. Ct. Oral Arg. Tr. 8:26-9:40.² At argument, Associate Justice Morgan noted that the North Carolina Supreme Court granted rehearing only on *Harper II*, not *Harper I*. *See id.* at 5:23-5:45. And Associate Justice Dietz indicated that under longstanding principles of North Carolina law, the North Carolina Supreme Court may not have jurisdiction to reach a federal question that is pending before this Court. *See id.* at 9:42-11:15.

There are serious questions under federal law, too, about whether the North Carolina Supreme Court has authority to overrule *Harper I* in light of this Court’s grant of certiorari. *Cf. Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (per curiam); Will Baude, *The Other Jurisdictional Question in Moore v. Harper*, *The Volokh Conspiracy* (Mar. 3, 2023 12:39 AM), <https://bit.ly/42mYk7Y>. Should this Court dismiss this case, it would essentially be deciding those issues about divestiture under both federal and state law, without the benefit of fulsome briefing or argument. Under the unique circumstances here—where a state high court has issued a final decision on a federal question, the court is not required to reach the federal question in pending proceedings, and there is no indication that the court intends to overrule its earlier decision on that federal question—this Court does not lose jurisdiction.

A dismissal of the petition now also raises other practical problems. If the North Carolina Supreme Court’s decision on rehearing in *Harper II* rests on state-law grounds, this Court may not have jurisdiction to review the federal question decided in *Harper I* on certiorari from the rehearing decision. *See Rio Grande W. Ry. Co. v. Stringham*, 239 U.S. 44, 47 (1915) (holding that certiorari was properly sought from first state high-court judgment addressing federal question, rather than subsequent state high-court decision that presented “nothing reviewable here”); *Dickinson v. Petroleum Conversion Corp.*, 338 U.S. 507, 513-516 (1950) (similar). Thus, if this Court holds that it lacks jurisdiction over *Harper I*, and the North Carolina Supreme Court does not reach any federal question on rehearing in *Harper II*, there could be *no avenue to obtain review of a crucial question of federal law*. This “stranding problem” further demonstrates that this Court has jurisdiction to reach the federal question presented here. Given this possible outcome, the Court should either issue its decision on the merits or hold this case pending the decision on rehearing in *Harper II*, rather than dismissing it for lack of jurisdiction.

² Available at <https://www.youtube.com/watch?v=cp-zlPxuu2I>.

The North Carolina Supreme Court's ruling in *Harper I* that the Elections Clause does not prohibit state courts from applying state constitutional prohibitions on partisan gerrymandering will survive and require decision regardless of the outcome of the North Carolina state-court proceedings addressing the remedial maps. Petitioners' position is that state courts have *no role to play* in evaluating congressional districting maps. See Pet'rs' Opening Br. 18 (arguing that "the state legislatures' authority" is "exclusive" and "excludes other state entities"). As the Non-State Respondents have explained, that is wrong as a matter of text, structure, history, and precedent. See Non-State Resp'ts' Br. 19-57.

If Petitioners are correct, however, it would mean that the North Carolina Supreme Court has no authority to even *adjudicate* the questions before it concerning the congressional map on rehearing in *Harper II*, regardless of how the state court ultimately resolves those questions. Thus, even if the state court holds as a matter of state law that the state constitution does not prohibit partisan gerrymandering, that ruling will not resolve the federal question whether the state court may adjudicate that question in the first place. The federal "issue" for purposes of *Cox* would still be decided, and the same need for this Court to resolve the meaning of the Elections Clause would persist. This Court thus retains jurisdiction to decide that federal question regardless of how the North Carolina Supreme Court rules on the state-law questions before it on rehearing. See *Local No. 438 Constr. & Gen. Laborers' Union, AFL-CIO v. Curry*, 371 U.S. 542, 548-550 (1963) (holding that the Court had jurisdiction to determine whether a state court had the "power to conduct" further proceedings). This case thus falls within the second *Cox* category.

Second, even if the proceedings in *Harper II* could "render[] unnecessary review of the federal issue by this Court," this Court has jurisdiction under the fourth *Cox* category. *Cox*, 420 U.S. at 482-483. That category applies when "the federal issue has been finally decided in the state courts with further proceedings pending in which the party seeking review here might prevail on the merits on nonfederal grounds, thus rendering unnecessary review of the federal issue by this Court, and where reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action," and where "refusal immediately to review the state court decision might seriously erode federal policy." *Id.*

Here, the federal issue at stake in *Harper I* has been finally decided by the North Carolina Supreme Court. That ruling is the law of the land in North Carolina and will persist regardless of how the North Carolina Supreme Court rules on rehearing in *Harper II*. Even if the state court's decision could "render[] unnecessary review of the federal issue by this Court," however, this Court would still have jurisdiction. *Cox*, 420 U.S. at 482-483. The fourth *Cox* category governs situations where the reversal of a "state court on the federal issue would be preclusive of any further litigation on the relevant cause of action." *Id.*; see, e.g., *id.* at 485-486;

Goodyear Atomic Corp. v. Miller, 486 U.S. 174, 179 (1988) (“a reversal of the Ohio Supreme Court’s holding would preclude any further proceedings”); *Belknap, Inc. v. Hale*, 463 U.S. 491, 497 n.5 (1983) (“a reversal here would terminate the state court action”). In this case, reversal of the North Carolina Supreme Court’s ruling that state courts have authority under the Elections Clause to review congressional redistricting maps for state constitutional compliance would preclude further litigation. It would mean that state courts have no substantive role to play in congressional redistricting, and that state constitutions have no bearing on federal elections conducted in that state.

This Court’s refusal to address that question now would “seriously erode federal policy.” *Cox*, 420 U.S. at 483. This Court has held that permitting “proceedings to go forward in the state court without resolving” a National Labor Relations Act “preemption issue would involve a serious risk of eroding the federal statutory policy of requiring the subject matter of respondents’ cause to be heard by the [National Labor Relations] Board, not by the state courts.” *Belknap*, 463 U.S. at 497 n.5 (quotation marks omitted). Likewise, this Court has held that a state-court decision implicating the constitutionality of a state RICO statute “calls into question the legitimacy of the law enforcement practices of several States, as well as the Federal Government,” and that it was “intolerable to leave” such a question “unanswered.” *Fort Wayne Books*, 489 U.S. at 55-56 (citation omitted).

The federal policy at issue here is far weightier than the jurisdiction of the NLRB or the validity of a state criminal statute. Allowing the state court to resolve this case without review by this Court would “leave unanswered” the crucial federal question whether the Elections Clause prohibits state courts from evaluating state elections laws for compliance with state constitutions. *Cox*, 420 U.S. at 484-485 (citation omitted). Petitioners’ position on this question “calls into question the legitimacy” of centuries of state-court practice, as well as the validity of the earliest state constitutions. *Fort Wayne Books*, 489 U.S. at 55. If this Court fails to reach that question, it will leave state courts and state legislatures “operating in the shadow” of this unresolved issue. *Cox*, 420 U.S. at 486. That outcome is “intolerable.” *Fort Wayne Books*, 489 U.S. at 56 (citation omitted). The authority of state courts to uphold state constitutions with respect to federal elections “should not remain in doubt.” *Id.* Redistricting disputes—and in particular, the jockeying over which map applies—can persist for years; this Court should not delay review of a crucial federal question until that litigation ends, potentially years after the next election cycle.

This “issue is almost certain to keep arising until the Court definitively resolves it.” *Moore v. Harper*, 142 S. Ct. 1089, 1089 (2022) (Kavanaugh, J., concurring in denial of application for stay). And the next time it arrives before this Court, it may be on an emergency basis in the lead-up to the primaries for the 2024 elections.

“Running elections state-wide is extraordinarily complicated and difficult. Those elections require enormous advance preparations by state and local officials, and pose significant logistical challenges.” *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of applications for stays). “[S]tate and local election officials need substantial time to plan for elections.” *Id.* Members of this Court have recognized that federal courts should refrain from “re-do[ing] a State’s elections laws in the period close to an election.” *Id.* at 880-881 (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam)). This Court should thus address the question presented now, rather than several months from now, when preparations for the 2024 primaries will be well underway. If this Court rules for Petitioners, the impact will be extraordinarily disruptive, invalidating potentially hundreds of state constitutional provisions. *See, e.g.*, Br. of Amicus Curiae Brennan Center for Justice 9-11 (Oct. 26, 2022); Br. of Amicus Curiae Benjamin L. Ginsberg 15-18 (Oct. 26, 2022). This potential for disruption further counsels in favor of the Court resolving the parties’ dispute in this case and at this time, rather than in the shadow of a pending election where state and local officials will have insufficient time to act.

B. This Court Has Never Had Jurisdiction Over *Harper II*.

This Court has never had jurisdiction over the state courts’ decisions with respect to which redistricting map applies. Respondents explained in their merits briefs that this issue was “outside this Court’s jurisdiction” because “[o]nly the trial court ha[d] reached a final judgment” on that question. Non-State Resp’ts’ Br. 69; *see* State Resp’ts’ Br. 22 (similar); U.S. Br. 28-29 (similar). Counsel for the State Respondents made the same point at oral argument. *See* Oral Arg. Tr. at 160:13-161:1 (“[W]e don’t think there’s a final judgment [on the remedial issue] yet.”).

Nothing has changed. There is still no final decision from the state courts on this question. This Court thus lacks jurisdiction to review the decisions of the North Carolina courts with respect to which redistricting map applies in 2024 and beyond. The North Carolina Supreme Court’s February 3 order allowing Petitioners to seeking rehearing of *Harper II* merely confirms that there is no final state-court decision, as required for this Court to exercise jurisdiction under Section 1257(a). If this Court decides the federal question presented here, it will resolve the federal question before this Court, while allowing the North Carolina Supreme Court to address any state-law questions that remain for resolution on rehearing.

C. This Court Retains Jurisdiction Over This Case Regardless Of The Outcome Of Further Proceedings In *Harper II*.

This Court retains jurisdiction over this case regardless of the outcome of the North Carolina Supreme Court’s rehearing proceedings in *Harper II*. Petitioners ask this Court to decide whether state courts can play *any role* in adjudicating

congressional redistricting maps. No matter how the North Carolina Supreme Court rules on rehearing of *Harper II*, that issue will remain live before this Court.

As Chief Justice Rehnquist explained in his concurrence in *Honig v. Doe*, 484 U.S. 305 (1988), this Court enjoys “the last word on every important issue under the Constitution and the statutes of the United States.” *Id.* at 332 (quotation marks omitted). This Court’s “unique resources—the time spent preparing to decide the case by reading briefs, hearing oral argument, and conferring—are squandered in every case in which it becomes apparent after the decisional process is underway that [this Court] may not reach the question presented.” *Id.* Even if the Court were to conclude that the controversy between the parties is mooted by some future action of the North Carolina Supreme Court, the Court should hold that it retains jurisdiction, preserving “the unique and valuable ability of this Court to decide a case” involving a fundamental question of constitutional law that is capable of repetition but has so far evaded review. *Id.* This would also avoid the problems earlier discussed with *Griggs*. To the extent Petitioners seek to moot their own case by asking the North Carolina Supreme Court to overrule a decision currently before this Court on certiorari, litigants do not get “to play ducks and drakes with the [federal] judiciary.” *Baker v. Carr*, 369 U.S. 186, 268 (1962) (Frankfurter, J., dissenting).

This Court should not wait until this question comes before it on an emergency basis in the lead up to the 2024 election cycle. The question presented is fully briefed, thoroughly argued, and ripe for decision. This Court is the only forum that can definitively resolve it and provide guidance to state legislatures and state courts across the country.

CONCLUSION

This Court should hold that it has jurisdiction to decide the vital constitutional question presented in this case, regardless of the North Carolina Supreme Court’s decision on rehearing in *Harper II*.

Respectfully submitted,

/s/ Neal Kumar Katyal
Neal Kumar Katyal

Counsel for Respondent Common Cause

cc: All counsel of record