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 Writ of Certiorari to the
Supreme Court of North Carolina

BRIEF OF *AMICUS CURIAE*
STEPHEN M. SHAPIRO
IN SUPPORT OF RESPONDENTS

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INTEREST OF THE *AMICUS*[1]

Amicus Stephen M. Shapiro lives in Maryland. His interest is in vindicating rights that preserve effective representation for himself and other voters. In 2013, he filed the original pro se complaint in what became *Lamone v. Benisek*, ultimately decided by this Court with *Rucho v. Common Cause* in 2019. He was the lead petitioner when *Benisek* was first before this Court as *Shapiro v. McManus* in 2015.

The Maryland General Assembly enacted new congressional districts in December 2021. That map was litigated under provisions of the Maryland Constitution similar to those at issue in this case. After a Maryland trial court enjoined the use of the December 2021 districts, the General Assembly enacted a remedial map that complied with the trial court's order that the districts must comprise compact areas of adjoining territory that minimize splitting counties. The parties agreed to dismiss appeals from the trial court's order, leaving the new April 2022 districts in place for the 2022 elections.

The Court's resolution of this case from North Carolina may bear on whether the Maryland trial court's order will remain viable to govern the legislature's design of future congressional maps.

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[1] *Amicus* files this brief pursuant to the blanket consents filed by all parties. No person other than the *Amicus* has authored this brief in whole or in part or made a monetary contribution toward its preparation or submission.

SUMMARY OF ARGUMENT

The Petitioners contend that the North Carolina judiciary has taken authority to regulate congressional elections despite no grant of authority to state courts in the Elections Clause. But no one contends that courts hold such authority. And a court's use of well-settled authority to rectify an illegal map before an imminent election cannot give rise to an injury affording this Court jurisdiction to review the judgment below.

As a prerequisite to confirming its jurisdiction, this Court must have precise understandings of the judgment below and of how it is claimed to abridge a right or privilege under the U.S. Constitution. *Maxwell v. Newbold*, 59 U.S. (18 How.) 511, 517 (1855). The judgment below, which may well be ambiguous, should be read to limit only actions that this Court has held exceed a legislature's Elections Clause authority. The trial court's use of metrics to bring the legislature's remedial map into partisan parity was inconsistent with the purpose of those metrics under the best reading of the order below.

Amicus provides, in the appendix to this brief, copies of the legislature's maps, the trial court's map, and a sample revision to the legislature's remedial map that complies with the best reading of the order—that districts be compact and contain whole counties to the extent possible. *Amicus* also provides charts of associated partisan and racial data for each map.

First, this Court lacks jurisdiction to review the judgment below since it does not implicate a "title, right, privilege, or immunity [that] is specially set up or claimed under the Constitution * * * [of] the United States." 28 U.S.C. § 1257(a). The judgment below limits the legislature's discretion to favor or disfavor political classes of voters and candidates in establishing congressional districts. But this Court has held that such favoritism is not among the legislature's protected rights or privileges under the Elections Clause. *See Cook v. Gralike*, 531 U.S. 510, 523 (2001). It is *ultra vires* to the legislature's Election Clause authority that might otherwise afford this Court jurisdiction. Thus this Court's jurisdiction ends upon finding that the Petitioners do not in fact claim denial of a protected right or privilege for which they may seek relief in this Court under 28 U.S.C. § 1257(a).

Second, the judgment below is correct under the North Carolina Equal Protection Clause. Partisan vote dilution implicates a fundamental North Carolina right, Pet.App. 100a-101a, ¶ 148 (citing *Stephenson v. Bartlett*, 355 N.C. 354, 377–82 (2002)), which thereby triggers strict scrutiny, notwithstanding that the class thereby disfavored is not a "suspect" class, *id.* at 98a, ¶ 144 (citing *Northampton Cty. Drainage Dist. No. One v. Bailey*, 326 N.C. 742, 746 (1990)). Such dilution arguably fails even rational basis review as it cannot be said to "bear some rational relationship to a conceivable legitimate governmental interest." *Texfi Indus., Inc. v. City of Fayetteville*, 301 N.C. 1, 11, 269 S.E.2d 142, 149 (1980).

Third, this Court ought not to decide whether the Supreme Court of North Carolina properly interpreted North Carolina law because the Federal Constitution affords alternative grounds to affirm the judgment below. *Amicus* respectfully notes that *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506 (2019), created an exception to this Court's precedents holding that the Elections Clause affords legislatures no authority to favor or disfavor political parties. *See Gralike*, 531 U.S. at 523 (quoting *U.S. Term Limits v. Thornton*, 514 U.S. 779, 833–34 (1995)). This Court's description of Elections Clause authority as a duty "to enforce the fundamental right involved," *id.* at 524 (quoting *Smiley v. Holm*, 285 U.S. 355, 366 (1932)) favors a narrow exception.

ARGUMENT

I. This Court Lacks Jurisdiction as Petitioners Cannot Claim Harm to Any Rights Under the Elections Clause

This Court lacks statutory authority to review the judgment below. Jurisdiction exists only where

> the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where *any title, right, privilege, or immunity is specially set up or claimed under the Constitution* or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. § 1257(a) (emphasis added).

Before this Court can determine its jurisdiction, it is essential "that this court might see what was the right claimed by [Petitioners], and whether it was denied to them by the decision of the state court." *Maxwell v. Newbold*, 59 U.S. (18 How.) 511, 517 (1855). The "decision of the state court" is perhaps ambiguous in key respects that cloud such insight. As will be shown, this Court reads such provisions in a manner that avoids jurisdiction.

Petitioners must claim that the Supreme Court of North Carolina has abridged their rights under the Elections Clause by way of its application of the North Carolina Equal Protection Clause and other provisions of the North Carolina Constitution "which are without any fair or substantial support." *Wolfe v. North Carolina*, 364 U.S. 177, 185-86 (1960) (citing *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 455 (1958); *Staub v. City of Baxley*, 355 U.S. 313, 318 (1958); and *Ward v. Bd. of Cty. Comm'rs*, 253 U.S. 17, 22 (1920)). Thus in this Court, the Petitioners essentially appear as Plaintiffs against the Defendant court below, represented by the Respondents here.

While a claim to establish jurisdiction under Section 1257 need not be "well founded," it must be "substantial." *United States v. Ansonia Brass Copper Co.*, 218 U.S. 452, 463 (1910); *Wilson v. North Carolina ex rel. Caldwell*, 169 U.S. 586, 595 (1898) (quoting *Hamblin v. W. Land Co.*, 147 U.S. 531, 532 (1893); and *City of New Orleans v New Orleans Water-works Co.*, 142 U.S. 79, 87 (1891)).

To raise a substantial federal question, the Petitioners must have suffered harm—an actual infringement of rights under the Elections Clause. *See Wilson*, 169 U.S. at 593; *id.* at 593-94 (quoting *Hovey v. Elliott*, 167 U. S. 409, 443 (1897)); *cf. Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 103 (1998) (citing *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)).

Prior cases where this Court proceeded to review an allegedly unsupportable state court judgment involved a clear injury to a federally-protected right. *See, e.g.*, *Bouie v. City of Columbia*, 378 U.S. 347, 349-50 (1964) (deprivation of due process in a criminal conviction); *Patterson*, 357 U.S. at 453 (deprivation of freedoms of speech and assembly through an order to provide a list of NAACP's Alabama members' names and addresses); *Broad River Power Co. v. South Carolina ex rel. Daniel*, 281 U.S. 537, 539 (1930) (taking of property through an order to provide streetcar service at a loss); *Fairfax's Devisee v. Hunter's Lessee*, 11 U.S. (7 Cranch) 603, 622, 627 (1813) (seizure of land protected by federal treaty).

Petitioners attack the judgment below as depriving the legislature of its authority under the Elections Clause. But what Petitioners specifically seek to vindicate—and all that the judgment below should be read to have taken—is the legislature's power to apply partisan favoritism in its design of North Carolina's congressional districts.

This Court has held that such favoritism is an exercise of power beyond a legislature's Elections

Clause authority. *Gralike*, 531 U.S. at 523-24 (quoting *U.S. Term Limits*, 514 U.S. at 833-34) ("[T]he Framers understood the Elections Clause as a grant of authority to issue procedural regulations, and not as a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints."). In *Gralike,* this Court struck down a ballot designed to disfavor candidates whose positions were at odds with the legislature's, holding that such a design was ultra vires to the legislature's Election Clause authority. *Id.* at 524-26. It would be inconsistent for designing a ballot to merely harm Gralike's candidacy to be ultra vires to the Elections Clause, but for redesigning his district to kill his candidacy to be within the Clause's authority.

Thus the Petitioners here, just as the legislators in *Gralike*, do not seek to exercise a right or privilege within the ambit of the Elections Clause, and cannot invoke this Court' jurisdiction to review the judgment below.

Rucho v. Common Cause, 139 S. Ct. 2484 (2019), does not suggest a contrary result. *Rucho* held, inter alia, that justiciable standards do not exist to enable a voter to file a claim against a state legislature for exceeding its Elections Clause authority. *See id.* at 2506 (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 305 (2004)). But *Rucho* did not implicate the holdings in *Gralike* and *U.S. Term Limits* that such favoritism is beyond the scope of a legislature's Elections Clause powers. Those holdings remain, and should remain, good law.

A. The Court Below Ordered that Favoritism Must Not Subordinate Traditional Criteria

The judgment below should be read to restrict only partisan favoritism—and not more. The court below ordered the General Assembly not to subordinate traditional districting criteria to partisan favoritism. Pet.App. 231a, para. 8. The order directed the General Assembly to apply the traditional districting criteria applicable to the state's legislative districts—to "include the drawing of single-member districts which are as nearly equal in population as is practicable, which consist of contiguous territory, which are geographically compact, and which maintain whole counties"—as a standard to limit partisan vote dilution. *Id.* (citing N.C. Const. art. II, §§ 3, 5).[2]

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[2] N.C. Const. art. II, § 3 provides in pertinent part:

    *   *   *

    (2) Each senate district shall at all times consist of contiguous territory;
    (3) No county shall be divided in the formation of a senate district;

    *   *   *

N.C. Const. art. II, § 5 provides in pertinent part:

    *   *   *

    (2) Each representative district shall at all times consist of contiguous territory;
    (3) No county shall be divided in the formation of a representative district;

    *   *   *

B. The Order Offered Partisan Metrics as an Option to Show That Less Rigorous Application of Traditional Criteria does not Implement Intentional Vote Dilution

To be sure, both the February 4, 2022 order and the February 14, 2022 opinion also discuss various partisan metrics that might indicate compliance or noncompliance with relevant provisions of the North Carolina Constitution. *See* Pet.App. 230a-231a, para. 6; *id.* at 110a-114a, ¶¶ 163-168. But those are best read as examples of prospective evidence that a trial court could consider in determining whether the legislature disregarded traditional criteria to pursue vote dilution, and not as parity standards that any congressional map must meet. *See* Pet.App. 114a-115a, ¶ 169 ("These are primarily questions of what evidence might be relevant to prove a redistricting plan's discriminatory effect * * *. Because [the use of partisan metrics] is not a strict proportionality requirement, there is no magic number of Democratic or Republican districts that is required, nor is there any constitutional requirement that a particular district be competitive or safe.").

Consistent with this purpose, the legislature could use partisan metrics to demonstrate the lack of partisan vote dilution where it opts, for a non-invidious reason, to adhere less strictly to traditional criteria. *See* Pet.App. 230a-231a, paras. 6-7; *see also id.* at 231a, para. 7 (quoting *Gaffney v. Cummings*, 412 U.S. 735, 736 (1973)). For example, the opinion discusses "using the measurement of [a partisan metric] to determine the degree of partisan

skew." Pet.App. 112a, ¶ 166. But the mere presence of such skew does not, without more, demonstrate intentional vote dilution—and the opinion does not say that it does. Rather it says that the lack of such skew suggests the lack of impermissible vote dilution. *See* Pet.App 112a, ¶ 165; *id.* at 113a, ¶ 166. And a specific variance from traditional criteria that results in no greater skew than seen with full compliance suggests that the variance was not likely done to pursue intentional vote dilution.

The opinion and order are perhaps critically ambiguous as to whether a map could be held unconstitutional merely in light of skew reflecting non-invidious conditions such as natural packing in urban areas, but with no evidence of purposeful vote dilution—i.e., whether a map could be illegal under a partisan "effects" determination without regard to intent. *Compare, e.g.*, Pet.App. 230a-231a, para. 6, *and* Pet.App. 112a-114a, ¶¶ 166-167, *with* Pet.App. 231a, para. 7, *and* 116a-117a, ¶ 170. Certainly the trial court interpreted the order to mandate partisan parity, and it modified the legislature's remedial map accordingly. *See* Pet.App. 280a, paras. 33-34 (citing Pet.App. 112a-114a, ¶¶ 166-167); *id.* at 293a. *Compare* Apps. C & D (legislature's remedial map) *with* Apps. G & H (trial court's interim map).

If a judgment below is ambiguous, this Court reads it in a manner that avoids jurisdiction:

> It is a fundamental rule of judicial restraint, however, that this Court will not reach constitutional questions in advance of the necessity of deciding them. This Court has

> relied on that principle * * * to resolve doubts about the independence of state-law decisions in favor of an interpretation that avoids a constitutional question.

Three Affiliated Tribes v. Wold Eng'g, P.C., 467 U.S. 138, 157-58 (1984) (citing *Black v. Cutter Labs.*, 351 U.S. 292, 299 (1956)). *See also Black*, 351 U.S. at 299-300 (citing *Stembridge v. Georgia*, 343 U.S. 541, 547 (1952)) (dismissing the writ of certiorari) ("[I]f the State Court's opinion be considered ambiguous, we should choose the interpretation which does not face us with a constitutional question.").

To this end, the "right to equal voting power," Pet.App. 115a, ¶ 170, should be read as a right not to have one's vote purposefully diluted—and not as a right of action for any lack of partisan parity not resulting from purposeful vote dilution. *See* Pet.App. 229a-230a, para. 5 (equating deprivation of "equal voting power" with partisan vote "dilution").

Alternatively, this Court could provide the court below guidance on how to clarify its judgment to avoid a federal constitutional injury affording this Court jurisdiction. *See Three Affiliated Tribes*, 367 U.S. at 158-59 (remanding for such a clarification but not reaching the merits); *Burton v. Wilmington Parking Auth.*, 365 U.S. 715, 730 (1961) (Harlan, J., dissenting); *Herb v. Pitcairn*, 324 U.S. 117, 128 (1945) ("[I]t seems consistent with the respect due the highest courts of states of the Union that they be asked rather than told what they have intended.").

Reading the judgment below to impose more than just a restriction on purposeful vote dilution might well afford this Court jurisdiction to review the judgment below. But reading the opinion and order in a manner consistent with this Court's guidance on ambiguity avoids this result.

C. The Order Only Required the Trial Court to Modify the Legislature's Remedial Map to Conform With Traditional Criteria, and Not to Make Greater Changes to Achieve Any Level of Statewide Partisan Parity

The order required the General Assembly to "submit to the trial court in writing, along with their proposed remedial maps, an explanation of what data they relied on to determine that their districting plan is constitutional, including what methods they employed in evaluating the partisan fairness of the plan." Pet.App. 230a-231a, para. 6. And the trial court, upon finding the legislature's remedial map not sufficiently compliant with its reading of the order, *see* Pet.App. 280a, paras. 33-34 (citing Pet.App. 112a-114a, ¶¶ 166-167), imposed its own interim remedial map, Pet.App. 293a.

The trial court viewed its interim map as only incorporating the changes necessary to bring the legislature's remedial map into compliance with the order. *See* Pet.App. 292a, para. 8. But the trial court interpreted such compliance as requiring it to make changes to cure the partisan skew—i.e., to increase the statewide number of Democratic seats.

The more modest best reading of the opinion and order only required the trial court to make the changes needed to implement full compliance with the traditional districting criteria in Article II, Sections 3 and 5 of the North Carolina Constitution.

Even if the order and opinion could be read to mandate some level of partisan parity, the opinion states that compliance with traditional criteria is "a compelling governmental interest." *See* Pet.App. 111a, ¶ 163 n.15; *id.* at 116a-117a, ¶ 170; *id.* at 124a-125a, ¶ 181; *id.* at 129a-130a, ¶ 195 (striking the original map). Thus even under that reading, the order clearly imposes no duty on the legislature or on a trial court to depart from those criteria, such as by splitting a city to spread out its Democratic voters, regardless of the partisan score.[3]

If a trial court finds that an enacted map meets neither the traditional criteria nor metrics showing no vote dilution, then the proper remedy is to make the minimal changes needed to make the map fully compliant with the traditional criteria, but no changes to explicitly improve its partisan score. *See* N.C. Gen Stat. § 120-2.4(a1); *Perry v. Perez*, 565 U.S. 388, 392-95 (2012).

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[3] Splitting a city can invidiously dilute its influence rather than extend it. The structure of North Carolina's many counties with highly Democratic (and often highly minority) centers makes the state vulnerable to vote dilution within seemingly compact districts when such towns and counties are unduly split. *See* Pet.App. 126a, ¶ 146; *cf. id.* at 33a, ¶ 45.

The North Carolina statute[4] is consistent with this Court's guidance in *Perry*.

There is a considerable practical difference between modifying a map to curtail vote dilution through enforcement of traditional criteria, and further modifying that map to attain partisan parity. A review of pertinent maps and charts of their partisan breakdowns will demonstrate this.[5]

The legislature's original map, SL 2021-174, would have likely resulted in 4 Democratic seats, 10 Republican seats, and no competitive seats (within a 5 percent margin). *See* Apps. A & B.

The legislature's remedial map, SL 2022-3, would have likely resulted in 4 Democratic seats, 6 Republican seats, and 4 competitive seats. *See* Apps. C & D.

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[4] N.C. Gen. Stat. § 120-2.4(a1) provides that

> In the event the General Assembly does not act to remedy any identified defects to its plan within that period of time, the court may impose an interim districting plan for use in the next general election only, but that interim districting plan may differ from the districting plan enacted by the General Assembly only to the extent necessary to remedy any defects identified by the court.

[5] *Amicus* produced these maps and charts using Dave's Redistricting App. ("DRA"), the same program used by the experts supporting the trial court's special masters. *See* Pet.App. 303a; *see also About DRA*, DAVE'S REDISTRICTING, https://davesredistricting.org/maps#aboutus.

Amicus developed a revision of SL 2022-3 that fully complies with the traditional criteria, to include minimizing splits of cities and counties. *See* Pet.App. 231a, para. 8 (applying N.C. Const. art. II, §§ 3, 5). *Amicus* did leave Charlotte, which is too large to fit within a single district, unchanged from SL 2022-3, with 62 percent of the city in District 12, along with other parts of eastern Mecklenburg County. The southwestern 38 percent of the city remains in District 14. *Amicus* made no attempt to attain or avoid any partisan score. This revision would likely yield 5 Democratic seats, 6 Republican seats, and 3 competitive seats. *See* Apps. E & F.

Other fully compliant variations of SL 2022-3 could have different partisan results. For example, placing 75 percent of Charlotte into District 12, similar to SL 2021-174, would turn District 14 Republican.[6] That change would turn *Amicus'* revision into one yielding 5 Democratic seats, 7 Republican seats, and 2 competitive seats. Under the best reading of the order, the legislature could enact either of those versions, or any other version fully compliant with traditional criteria, or any version perhaps less compliant but where shown that compliance was not subordinated to achieve purposeful vote dilution.

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[6] SL 2021-174 put 83 percent of Charlotte in District 12, comprising 97 percent of that district. But SL 2021-174 had other districts to the north and the south of the city within Mecklenburg County. Splitting Mecklenburg County among only two districts makes it possible to place no more than 75 percent of Charlotte within one of those two districts.

The trial court made greater changes to SL 2022-3 to achieve a statewide ratio of Democratic and Republican seats more in proportion to the statewide vote. *See* Pet.App. 280a, ¶¶ 33-34 (citing Pet.App. 112a-114a, ¶¶ 166-167); *see also id.* at 230a-231a, para. 6. To do this, it extended District 12 east across the Mecklenburg County line into Cabarrus County.[7] This split Charlotte nearly in half, with 44 percent in District 12, and 56 percent in District 14—making both Districts 12 and 14 Democratic districts.[8] *See* Apps. G & H. The trial court's interim map is likely to yield 6 Democratic seats, 7 Republican seats, and 1 competitive seat.

In summary, the legislature's remedial map had 4 firm Democratic seats, as did its original map, but the remedial map made 4 of the original 10 firm Republican seats competitive. Making the legislature's remedial map fully compliant with traditional criteria increases the number of firm Democratic seats from 4 to 5, with 2 or 3 seats remaining competitive. This indirect increase of one Democratic seat reflects the reduced opportunity for

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[7] Both *Amicus'* revision to SL 2022-3 and the trial court's revision to SL 2022-3 (the Interim Map) split 13 counties among 2 districts, the least amount of splitting that still permits achieving equal populations in each district. Thus not splitting Cabarrus County in this way would have required splitting another county among two districts.

[8] Splitting Charlotte did not have the effect of diminishing the impact of the city's voters, as even the smaller segment makes up more than half of its district. To a lesser extent, the interim map also splits Raleigh, Winston-Salem, and Fayetteville, which were unified in SL 2022-3. But the interim map unified Greensboro and Greenville, which were split in SL 2022-3.

vote dilution that comes with fuller adherence to traditional criteria.[9] Further increasing the number of firm Democratic seats from 5 to 6 requires further changes directly for that purpose.

The Court should find that remediating the legislature's map only as needed to make it fully compliant with traditional districting criteria is consistent with this Court's guidance in *Perry v. Perez*, and does not infringe upon any right or privilege of the legislature as might afford this Court jurisdiction to review the judgment below.

II. The North Carolina Equal Protection Clause Supports the Judgment Below

When this Court has jurisdiction to review a state court's judgment under 28 U.S.C. § 1257(a), this Court affirms the judgment unless it is "without any fair or substantial support." *Wolfe v. North Carolina*, 364 U.S. 177, 185-86 (1960) (citing *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 455 (1958); *Staub v. City of Baxley*, 355 U.S. 313, 318 (1958); and *Ward v. Bd. of Cty. Comm'rs*, 253 U.S. 17, 22 (1920)); *Enter. Irrigation Dist. v. Farmers Mut. Canal Co.*, 243 U.S. 157, 164 (1917). This approach is consistent with this Court's practice to accept an interpretation of state law by a lower federal court unless it is "clearly wrong" or "plain error." *Expressions Hair Design v. Schneiderman*,

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[9] Invidious vote dilution should be considered to require some departure from full compliance with traditional criteria. But lesser favoritism might still be gained with full compliance.

137 S. Ct. 1144, 1150 (2017) (quoting *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 500 n.9 (1985)). At least as much deference is due to such an interpretation by a state's highest court, as those courts are even "better schooled in and more able to interpret the laws of their respective States." *Id.* (quoting *Brockett*, 472 U.S. at 500).

There is nothing insubstantial about the holding below that partisan vote dilution violates equal protection. And particularly under the best reading of the opinion and order, discussed *supra* Part I, the holding is quite similar to what the dissent in the court below suggested would be a proper analysis.

The North Carolina Equal Protection Clause provides that "[n]o person shall be denied the equal protection of the laws." N.C. Const. art. I, § 19, cl. 2. North Carolina is free to interpret this provision so as to afford greater protection than that of the Fourteenth Amendment. *See Pruneyard Shopping Ctr. v. Robins*, 447 U.S. 74, 81 (1980).

Under North Carolina law, partisan vote dilution implicates the right to vote, a fundamental North Carolina right. Pet.App. 100a-101a, ¶ 148 (citing *Stephenson v. Bartlett*, 355 N.C. 354, 377-82, 562 S.E.2d 377, 393-96 (2002)). *Stephenson* held that a mixture of single and multimember districts in the same plan implicates the fundamental right to vote. 355 N.C. at 378, 562 S.E.2d at 393. The court below fairly extended that holding to conclude that partisan vote dilution implicates a right that is sufficiently similar to vote dilution based on geography or district type to render it fundamental.

A classification that implicates a fundamental right draws strict scrutiny. Pet.App. 98a, ¶ 144 (citing *Northampton Cty. Drainage Dist. No. One v. Bailey*, 326 N.C. 742, 746 (1990)).

The dissent below contends that "partisan gerrymandering alone does not constitute 'an infringement of a fundamental right.'" Pet.App. 208a, ¶ 290 (quoting *Texfi Indus., Inc. v. City of Fayetteville*, 301 N.C. 1, 11, 269 S.E.2d 142, 149 (1980)). But this quote from *Texfi* is out of context. *Texfi* was merely stating one of the two preliminary findings, the other being a "suspect classification," that trigger strict scrutiny. *Id.* *Texfi* did not say or imply that partisan vote dilution is not such an infringement. *Id.* Rather, the opposite. *Texfi* said that the determination as to whether an infringed right is fundamental "requires consideration of the facts and circumstances behind the challenged law, the interest which the state claims to be protecting, and the interest of those who are disadvantaged by the classification." *Id.* at 12, 269 S.E.2d at 150 (citing *Storer v. Brown*, 415 U.S. 724 (1974)). After such consideration, *Texfi* held that the appellant there had no fundamental right to vote on annexation because it was a *corporation*, and then went on to note in that same paragraph that "[a] state may not dilute the strength of a *person's* vote to give weight to other interests." *Id.* at 13, 269 S.E.2d at 150 (emphasis added).

The majority below used a similar analysis as in *Texfi* to determine that the impact of partisan vote dilution upon the right to vote is sufficiently similar to that of the dilution considered in *Stephenson* to

qualify it as fundamental. *See* Pet.App. 100a-102a, ¶¶ 148, 150. Thus *Texfi* and *Stephenson* afford an arguable if not firm basis for the state court's holding that partisan vote dilution implicates a fundamental right to vote under North Carolina law.[10] While the dissent below is correct that partisan vote dilution is not identical to the vote dilution addressed in *Stephenson*, *see* Pet.App. 211a, ¶ 295, that point is not determinative. The question is whether the majority reasonably extended *Stephenson* to the dilution at hand in light of the similarities and differences. On that question, the majority came to a different conclusion than the dissent, but the majority's conclusion is plainly not frivolous or clearly wrong.

Partisan vote dilution arguably fails even rational basis review as such a classification cannot be said to "bear some rational relationship to a conceivable *legitimate* governmental interest." *Texfi*, 301 N.C. at 11, 269 S.E.2d at 149 (emphasis added). "A state may not dilute the strength of a person's vote to give weight to other interests." *Id.* at 13, 269 S.E.2d at 150. The dissent below disagreed, contending that the legislature's original map, SL 2021-174, "pass[es] rational basis review because [it is] rationally related to the General Assembly's legitimate purpose of redrawing the [state's congressional] districts after each decennial census." Pet.App. 211a, ¶ 295 n.15.

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[10] An analogous situation would be if the legislature similarly diluted the votes of black voters. Of course, black voters are a "suspect" class. But no one would suggest that the implicated right to vote was not also "fundamental," justifying strict scrutiny in that situation on both grounds.

Updating congressional districts is of course a legitimate if not compelling state interest. But just because a classification is integral to legislation with a legitimate purpose does not mean that the classification is *rationally related* to that purpose. The "relationship of the classification to its goal [must] not [be] so attenuated as to render the distinction arbitrary or irrational." *Rhyne v. K-Mart Corp.*, 594 S.E.2d 1, 15 (N.C. 2004) (quoting *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992)); *cf. id.* (quoting *State v. Joyner*, 211 S.E.2d 320, 323 (N.C. 1975)). Rather, "the means used by the government must be reasonable to serve that legitimate goal." *In re R.L.C.*, 643 S.E.2d 920, 924 (N.C. 2007).

The classification of voters by party was done to dilute their impact on the election outcome and thereby favor the legislature's choice as to the outcome. While it may well be rational for a legislator to want to do this, it is too far attenuated from its *legitimate* goal—"to enforce the fundamental right involved," *Smiley*, 285 U.S. at 366. In this regard, it is arbitrary and unreasonable to facilitate voters' choices by favoring the legislature's. *See Gralike*, 531 U.S. at 523. Partisan vote dilution is similarly arbitrary when it disregards traditional criteria for reasons unrelated to the goal of facilitating voters' representation. *See infra* Section III.A. While the legislature enjoys broad discretion in how it pursues its policy goals, *see Rhyne*, 594 S.E.2d at 15 (quoting *State ex rel. Utilities Comm'n v. Carolina Utility Customers Ass'n*, 446 S.E.2d 332, 346 (N.C. 1994)), a classification that is done to pursue a goal cannot be rationally related if it is diametrically opposed to the

goal, *see Utilities Comm'n*, 446 S.E.2d at 346. Here, the legislature could not "have had a reasonable basis for concluding that the measures taken would assist in the accomplishment of the goal." *Id.*

As discussed in Part I, the best reading of the judgment below imposes a standard such that equal protection is violated when partisan vote dilution subordinates the traditional districting criteria in Article II, Sections 3 and 5 of the North Carolina Constitution, as interpreted by *Stephenson*, 355 N.C. at 371, 562 S.E.2d at 389 (quoting *Shaw v. Reno*, 509 U.S. 630, 647 (1993)) (including "compactness, contiguity, and *respect for political subdivisions*") (emphasis in original of *Stephenson*). *See* Pet.App. 231a, para. 8 (adopting nearly verbatim language). As shown in Section I.C., these criteria can limit partisan dilution similar to how *Shaw* recognized that they can suggest the absence of racial vote dilution. *See* 509 U.S. at 647.

In extending the constitutional standard for legislative districts to enforce equal protection for congressional districts, the court below read Article I, Section 19 of the North Carolina Constitution in coordination with Article II, Sections 3 and 5. This extension is analogous to the process that the dissent below recounted approvingly. *See* Pet.App. 194a, ¶ 278:

> Thus, to arrive at a proper and harmonious interpretation of the constitutional text, the Court read the principles regarding the privilege of education enshrined in our Declaration of Rights in conjunction with the

specific application given to education in a later article. As done in *Deminiski*, this Court should construe the general provisions of the Declaration of Rights in harmony with the more specific provisions addressing redistricting.

Id. While the more specific provision applied here is not itself expressly applicable to congressional districts, it is not unprecedented for a state court to apply such a provision in this manner. *See, e.g., Md. Green Party v. Md. Bd. of Elections*, 377 Md. 127, 142, 144, 150 (2003). And this application within a single state avoids the concern noted in *Rucho* on maintaining consistency in a national application of such standards from various states. *See* Pet.App. 70a, ¶ 107 (citing *Rucho*, 139 S. Ct. at 2505).

III. This Court Should Narrow *Rucho*'s Exception to *Gralike*'s Ban on Partisan Favoritism in Elections Clause Statutes

Reading this Court's most pertinent Elections Clause decisions together, state legislatures are generally forbidden to enact statutes pursuant to the Elections Clause that are designed "to dictate electoral outcomes, [or] to favor or disfavor a class of candidates." *Cook v. Gralike*, 531 U.S. 510, 523-24 (2001) (quoting *U.S. Term Limits v. Thornton*, 514 U.S. 779, 833–34 (1995)) (holding that such favoritism exceeds a legislature's Elections Clause authority). However, designing congressional districts is an exception, where partisanship in redistricting is permitted in light of the practical challenges in completely banning politics in drawing

districts, and the lack of standards to define an enforceable limit on partisan favoritism in that task. *See Rucho v. Common Cause*, 139 S. Ct. 2484, 2497 (2019); *id.* at 2506 (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 305 (2004)). This exception allowed for the favoritism seen in the original congressional maps enacted in North Carolina and in Maryland in 2021.

This Court can and should narrow this exception in light of the contradictions that its current unlimited scope poses to Article I, as well as recent experience with suitable standards. A narrower exception would afford this Court alternative grounds to affirm the judgment below. *See Greenlaw v. United States*, 554 U.S. 237, 250 n.5 (2008); *McGoldrick v. Compagnie Generale Transatlantique*, 309 U.S. 430, 434 (1940). Affirming on these grounds would avoid the need for this Court to review the judgment below under North Carolina law.[11] This Court should also affirm on these grounds if it finds that the North Carolina Constitution does not arguably support the judgment below, or if this Court holds that a state legislature is not subject to its state's constitution in performing its Elections Clause duties.

Even if a state legislature's authority to enact congressional districts also stems from its reserved powers, *see Gralike*, 531 U.S. at 530 (Thomas, J., concurring), the Privileges or Immunities Clause protects voters' representational rights from state

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[11] Relatedly, the presence of grounds for affirmance under federal law could well suggest the absence of jurisdiction to review the state court judgment under 28 U.S.C. § 1257.

abridgment under any legislative source of power.[12] *See U.S. Term Limits*, 514 U.S. at 842-45 (Kennedy, J., concurring) (quoting, inter alia, *United States v. Classic,* 313 U. S. 299, 315 (1941); and *United States v. Cruikshank,* 92 U. S. 542, 552 (1876)); *Twining v. New Jersey*, 211 U.S. 78, 97 (1908) (citing *Ex parte Yarbrough*, 110 U.S. 651, 663 (1884); and *Wiley v. Sinkler,* 179 U.S. 58, 62-63 (1900)), *overruled on other grounds by Malloy v. Hogan*, 378 U.S. 1 (1964).

A.   Article I Disfavors a Wide Exception to *Gralike's* Ban on Partisan Favoritism

Partisan vote dilution poses three discrete violations of Article I. First, it is what a legislature does to "favor or disfavor a class of candidates." *Gralike*, 531 U.S. at 523-24 (quoting *U.S. Term Limits*, 514 U.S. at 833–34). As noted in Part I, it is inconsistent to hold that a legislature may not disfavor Mr. Gralike in designing the ballot, *id.*, but that it may alter his district to make it viable only for his opponent's party. Both cases of favoritism are repugnant to Article I, Section 2—and ultra vires to the Elections Clause—because they intrude upon the voters' authority to choose their Representatives. See *U.S. Term Limits*, 514 U.S. at 842 (Kennedy, J., concurring) ("Nothing in the Constitution or The Federalist Papers, however, supports * * * state interference with * * * the selection of legislative representatives.").   The legislature's duty is to facilitate the voters' choosing,

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[12] "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." U.S. Const. amend. XIV, § 1, cl. 2.

Smiley v. Holm, 285 U.S. 355, 366 (1932), and not to abridge it, *U.S. Term Limits*, 514 U.S. at 834 (majority op.) (quoting *Tashjian v. Republican Party of Conn.*, 479 U. S. 208, 217 (1986)).

Second, partisan vote dilution also violates the principal of equal protection, *see supra* Part II, which applies to congressional districts through Article I, Section 2 rather than the Fourteenth Amendment. *See Wesberry v. Sanders*, 376 U.S. 1, 4, 7-8 n.10 (1964); *cf. Gaffney v. Cummings*, 412 U.S. 735, 751 (1973) (quoting *Fortson v. Dorsey*, 379 U.S. 433, 439 (1965)) (noting that political vote dilution involving multimember legislative districts would be "invidiously discriminatory"); *Morey v. Doud*, 354 U.S. 457, 471 (1957) (Black, J., dissenting), *overruled by City of New Orleans v. Dukes*, 427 U.S. 297, 306 (1976) ("[S]tate regulation should be viewed quite differently where it touches or involves * * * specific safeguards of the Bill of Rights. It is the duty of this Court to be alert to see that these constitutionally preferred rights are not abridged."). Representational rights under Article I have no less dignity.[13]

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[13] Justice Frankfurter's dissent in *Morey*, 354 U.S. at 473, 475, cited with approval in *Dukes*, 427 U.S. at 306, urged the Court not to apply the Equal Protection Clause in a manner reflecting Justices' policy views—citing such cases from the *Lochner* era and referring to the contemporary Warren Court. But Justice Frankfurter distinguished such activism from proper apolitical enforcement. *See* 354 U.S. at 475 (quoting Justice Holmes in *Engel v. O'Malley*, 219 U.S. 128, 138 (1911)) ("[W]here size is not an index * * * the law cannot discriminate between the great and small."). Justice Black, in his separate dissent, 354 U.S. at 471, similarly allowed for striking "plainly unreasonable" classifications.

Third, when pursuit of partisan vote dilution leads a legislature to abandon traditional districting criteria, it inhibits the functions of representation. Representational rights include more than just the right to choose a Representative. Article I, Section 2 affords voters ongoing rights to be represented after the election takes place, which their legislature has a duty not to impede. Congressional districts, and the voters they contain, have traditionally been defined by their geographic location, and a coherent definition is essential to effective representation:

> Each legislator represents * * * a particular set of constituents with particular interests and views * * * * [that] have an important effect on everything that a legislator does. * * * * [I]t matters a lot how voters with shared interests and views are concentrated or split up. The cumulative effects of all the decisions that go into a districting plan have an important impact on the overall work of the body.

Va. House of Delegates v. Bethune-Hill, 139 S. Ct. 1945, 1956 (2019) (Alito, J., dissenting). The linkage between the geographic definition of a constituency and the resulting impact on representation is even clearer in light of the duties of a Representative:

> No reasoning * * * was necessary to satisfy the American people of the advantages of a [H]ouse of [R]epresentatives, which should emanate directly from themselves; which should guard their interests, support their rights, express their opinions, make known

their wants, redress their grievances, and introduce a popular pervading influence throughout all the operations of the government.

Joseph Story, *Commentaries on the Constitution of the United States*, Book III, Ch. IX, § 573 (1833). *See generally* R. Eric Petersen, Cong. Research Serv., Rep. No. RL33686, *Roles and Duties of a Member of Congress: Brief Overview* (updated Feb. 15, 2022).

When partisan vote dilution results in districts that are geographically incoherent, it impacts these services for all residents. *See* Nat'l Council of State Legislatures ("NCSL"), *Redistricting Law 2010*, at 109-10 (2009) (citing *Karcher v. Daggett*, 462 U.S. 725, 756 (1983) (Stevens, J., concurring); and quoting *DeWitt v. Wilson*, 856 F. Supp. 1409, 1414 (E.D. Cal. 1994)); Royce Crocker, Cong. Research Serv., Rep. No. R42831, *Congressional Redistricting: An Overview* 10, 11-12 (Nov. 21, 2012).

For example, Maryland's District 4 is a majority-black district. *See* Apps. I & J. In the original December 2021 map, most of the district included Democrats in urban areas near Washington, D.C., but a significant minority were Republicans in rural areas south of Annapolis. District 7 is a similar majority-black district. *Id.* The original map gave it a majority of Democrats in Baltimore City and adjacent areas of Baltimore County, but also a significant minority of Republicans in rural parts of northern and eastern Baltimore County. Districts 6 and 8 had majorities of Democrats in suburbs near

Washington, D.C., but extended to rural Republican areas of far northern and western Maryland.

In such districts, whose interests would be guarded, rights supported, opinions expressed, wants made known, and grievances redressed? Even for constituents among the majority of those districts, it would be cumbersome for their Representative to provide such services while making an honest attempt to meet and serve both sets of constituents. Some unavoidable degree of complexity will exist in districts fully compliant with traditional criteria. But the degree of complexity in providing constituent services to these districts would have been large and unnecessary.

A legislature that designs districts in an arbitrary fashion lacking geographic coherence thus fails to "enforce the fundamental right involved," *Smiley*, 285 U.S. at 366, particularly when it does so to favor its choice. *Cf. Bethune-Hill*, 139 S. Ct. at 1957 (emphasizing "that a legislature [invests] so much effort * * * in drawing * * * districting plans"). If a *legislature* may suffer a cognizable Article I injury through the imposition of an ill-defined constituent base, *see id.* at 1957, *voters* stand to suffer at least as much harm to their Article I rights.

B. Traditional Districting Criteria are Proven Standards to Limit the Greatest Intrusions on Representational Rights

Prohibiting legislatures from subordinating traditional districting criteria—specifically (1) compactness, (2) contiguity, and (3) minimizing

division of political subdivisions—to pursue partisan vote dilution would limit all three aspects of intentional harm to voters' representational rights, while still affording legislatures considerable discretion to incorporate political considerations. *See* NCSL *Redistricting Law 2010*, at 109 (citing *Karcher,* 462 U.S. at 756, 758); Crocker, *Congressional Redistricting: An Overview* 10, 11-12.

This proposed standard makes no statement as to "fairness," *see Vieth*, 541 U.S. at 268-69, 291, but more pertinently limits harm to voters' representational rights. It allows divergence from traditional criteria that is not done to dilute disfavored voters. And while this standard may not entirely eliminate partisan favoritism done through districts compliant with traditional criteria, this remaining favoritism is not a reason to forego preventing the constitutional injuries posed by invidious partisan vote dilution.

A comparison of original and remedial congressional district maps for North Carolina and Maryland demonstrates how this standard can protect representational rights.

Legislatures in both Maryland and North Carolina enacted congressional district maps in 2021, *see* Apps. A & I, that courts found to reflect significant partisan vote dilution. *See* Mem. Op. & Order at 93-94, *Szeliga v. Lamone*, Case No. C-02-CV-21-001816 (Md. Cir. Ct. Mar. 25, 2022) (Anne Arundel Cty.); Pet.App. 229a-230a, para. 5. The original North Carolina map, SL 2021-174, would have likely elected 4 Democrats and 10 Republicans.

See App. B. The original December 2021 Maryland map would have likely elected 7 Democrats and 1 Republican. *See* App. J. Both of these original maps lacked compliance with traditional districting criteria, and in both cases, the legislatures subordinated those criteria in order to achieve their desired electoral outcomes. *See* Pet.App. 130a, ¶ 195; Mem. Op. & Order at 88, *Szeliga*.

Amicus' revision of the North Carolina legislature's remedial map, SL 2022-3, making it fully compliant with the traditional criteria, would likely elect 5 Democrats and 6 Republicans, with 3 seats becoming competitive.[14] *See* Apps. E & F.

Maryland's legislature enacted a remedial map after a trial court ordered it to make its original December 2021 map compliant with traditional criteria. *See* Declaratory J., Permanent Inj. & Order of Remand at 3, para. 8, *Szeliga* (Mar. 25, 2022) (citing Md. Const. art. III, § 4).[15] The April 2022 Maryland remedial map is likely to elect 6 Democrats and 1 Republican, with 1 seat becoming competitive. *See* Apps. K & L.

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[14] North Carolina is using the interim map ordered by the trial court for the 2022 elections. *See* apps. G & H. *Amicus* is using his sample revision to SL 2022-3 in this example as it is more consistent with the best reading of the order below and with the Article I standard he proposes here.

[15] Md. Const. art. III, § 4 provides that "[e]ach legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions."

Both of these remedial maps still afford the legislatures definite but reduced ability to achieve political advantage, but both avoid the vote dilution that was necessary to achieve the modest further political advantage seen in the original maps. The proposed standard prevented that further partisan favoritism and the associated invidious vote dilution and harm to representation. *Compare* Districts 4, 6, 7 & 8 in Apps. I & J, *with* Districts 4, 6, 7 & 8 in Apps. K & L.

The elements of the proposed standard are well known to state legislatures and courts. In the 2010 redistricting cycle, 48 states required legislative or congressional districts to be contiguous, 43 states limited splitting political subdivisions, and 34 states required compactness. NCSL, *Redistricting Law 2010*, at 106-08, Table 8. It should not be an insurmountable task for federal courts to develop the consistency that might be required for national application, similar to how definitions for terms in statutes and in other Court opinions have evolved.

* * * * *

Perhaps Congress ought to forbid the subordination of traditional criteria to partisan vote dilution as being repugnant to public policy. But *Amicus* respectfully encourages this Court to do so because the practice is repugnant to voters' representational rights and the U.S. Constitution's allocation of power between a state's legislature and its voters. *See Bell v. Wolfish*, 441 U.S. 520, 562 (1979) (contrasting political and judicial branch duties); *Highland Farms Dairy v. Agnew*, 300 U.S.

608, 612 (1937) (warranting this Court's intervention in "a controversy affecting the structure of the national government as established by the provisions of the national Constitution"); *cf. El-Shifa Pharm. Indus. Co. v. United States*, 607 F.3d 836, 852 (D.C. Cir. 2010) (Ginsburg, J., concurring) ("The result of staying the judicial hand is to upset rather than to preserve the constitutional allocation of powers between the executive and the legislature."); *id.* at 857 (Kavanaugh, J., concurring). *See also* Jonathan R. Siegel, *Political Questions and Political Remedies* 27-34, GW Law Faculty Publ'ns & Other Works No. 916 (2004).

CONCLUSION

The Court should dismiss the writ of certiorari for lack of jurisdiction. If the Court maintains jurisdiction, it should affirm the judgment below under the North Carolina Constitution, or alternatively, under the United States Constitution.

Respectfully submitted,

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October 24, 2022

APPENDIX

APPENDICES

All maps and their associated partisan and racial
composition data are reproduced herein with
permission of Dave's Redistricting App.
See About DRA, Dave's Redistricting,
https://davesredistricting.org/maps#aboutus.

DRA calculates partisan compositions using prior
election data provided by the Voting and Election
Science Team hosted by Harvard. *See*
https://dataverse.harvard.edu/dataverse/electionsci
ence.

Amicus uploaded census block data to DRA from
official N.C. & Md. state websites.
See https://www.ncleg.gov/Redistricting;
https://mgaleg.maryland.gov/Other/Redistricting/Fi
nal/webpage-final.pdf;
https://planning.maryland.gov/Redistricting/Pages/
2020/congDist.aspx.

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Appendix A

Legislature's Original Map

SL 2021-174

Note: Districts in SL 2021-174 have different numbers from the other N.C. maps
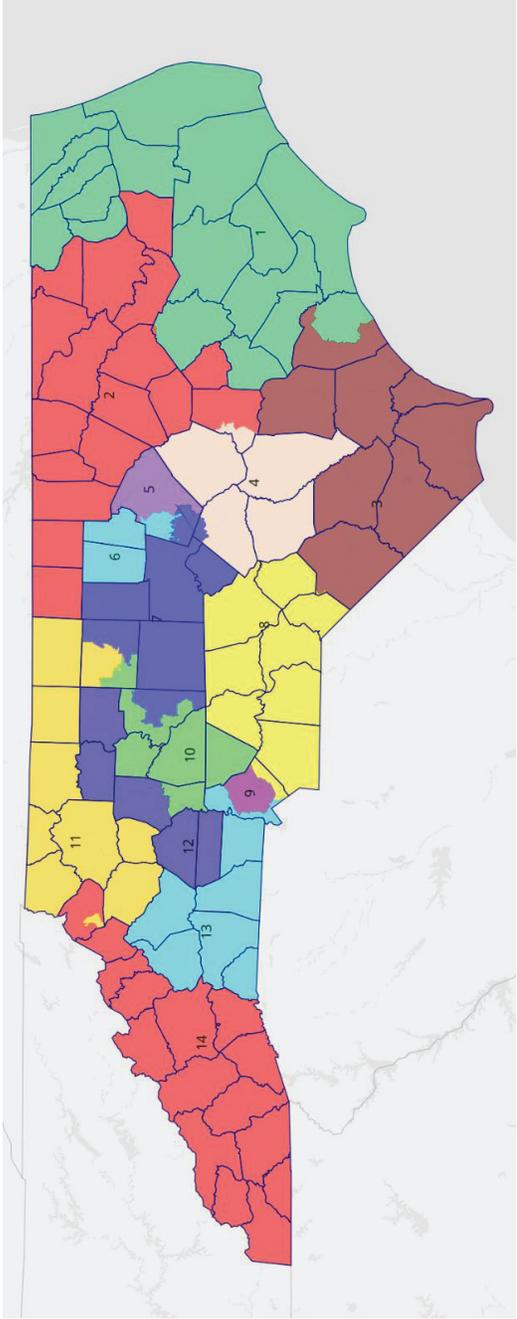
Appendix B — Partisan & Racial Data for N.C. Legislature's Original Map						
SL 2021-174		Partisan Voting History			Voting Age Population	
Dist	Total Pop	Dem	Rep	Margin	White	Hispanic	Black
1	745670	41.77%	56.10%	14.33%R	65.57%	6.90%	23.31%
2	745670	52.07%	46.45%	5.62%D	50.61%	6.72%	39.99%
3	745671	41.44%	56.34%	14.90%R	67.31%	6.90%	16.44%
4	745671	46.24%	51.48%	5.24%R	53.99%	11.95%	29.19%
5	745671	62.31%	35.16%	27.15%D	58.31%	10.89%	24.47%
6	745671	71.58%	26.19%	45.39%D	54.50%	10.01%	21.42%
7	745671	41.27%	56.63%	15.35%R	69.34%	10.37%	16.02%
8	745670	40.71%	57.07%	16.35%R	66.72%	8.29%	17.22%
9	745670	71.65%	25.75%	45.90%D	40.09%	14.87%	37.95%
10	745671	38.24%	59.32%	21.08%R	68.88%	8.02%	16.97%
11	745671	42.89%	54.95%	12.06%R	69.11%	6.67%	19.97%
12	745670	42.50%	55.16%	12.66%R	67.88%	9.80%	17.86%
13	745671	38.75%	59.02%	20.27%R	72.62%	7.08%	15.43%
14	745670	45.07%	52.39%	7.32%R	84.49%	6.29%	3.96%
N.C.	745671	48.32%	49.43%		63.64%	8.88%	21.37%

Appendix C

Legislature's Remedial Map

SL 2022-3

4a
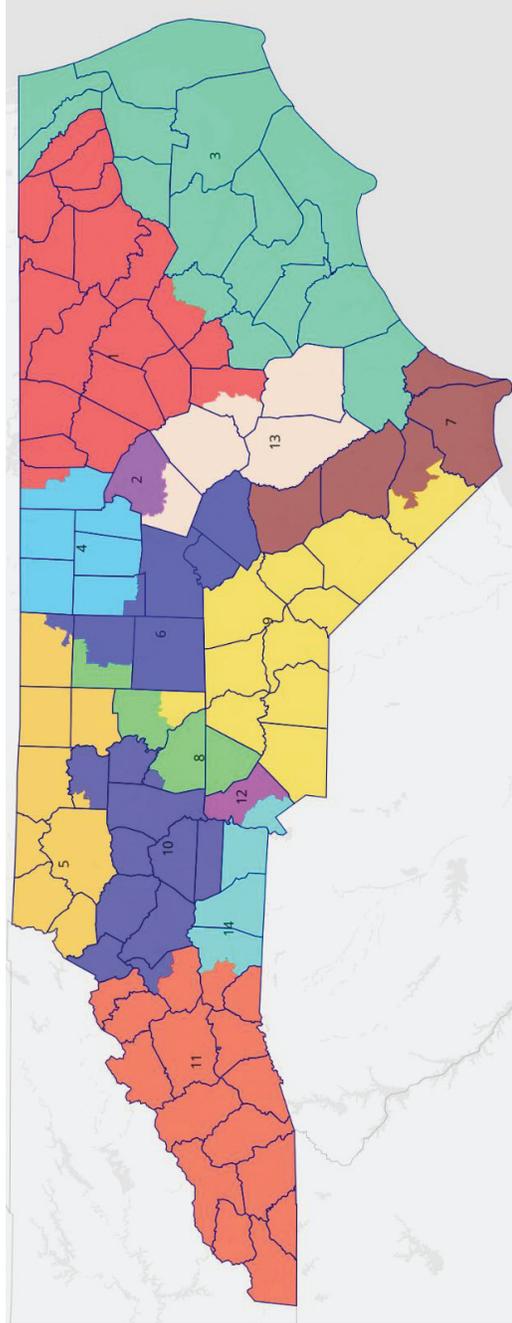
| Appendix D – Partisan & Racial Data for N.C. Legislature's Remedial Map							
SL 2022-3		Partisan Voting History			Voting Age Population		
Dist	Total Pop	Dem	Rep	Margin	White	Hispanic	Black
1	745671	53.95%	44.58%	9.37%D	48.91%	6.32%	41.98%
2	745671	63.19%	34.25%	28.94%D	59.20%	10.39%	22.35%
3	745671	37.80%	59.89%	22.09%R	69.76%	7.27%	18.48%
4	745671	66.20%	31.82%	34.38%D	55.75%	10.88%	26.57%
5	745671	43.17%	54.54%	11.37%R	70.84%	8.70%	16.83%
6	745670	49.55%	48.36%	1.19%D	59.71%	10.16%	25.67%
7	745671	49.33%	48.27%	1.06%D	62.06%	7.63%	25.16%
8	745670	40.99%	56.64%	15.65%R	66.05%	8.53%	18.95%
9	745670	37.98%	60.02%	22.04%R	61.53%	7.79%	19.49%
10	745670	28.86%	68.77%	39.91%R	80.63%	6.81%	7.91%
11	745671	43.81%	53.72%	9.91%R	84.71%	6.16%	3.98%
12	745671	65.68%	31.77%	33.91%D	45.78%	12.86%	33.94%
13	745670	47.44%	50.27%	2.83%R	61.82%	11.31%	17.50%
14	745670	47.77%	49.88%	2.11%R	62.65%	9.90%	21.11%
N.C.	745671	48.32%	49.43%		63.64%	8.88%	21.37%

Appendix E

Amicus' Revision to SL 2022-3

Sample of SL 2022-3 Revised to be Fully Compliant with Traditional Criteria

6a
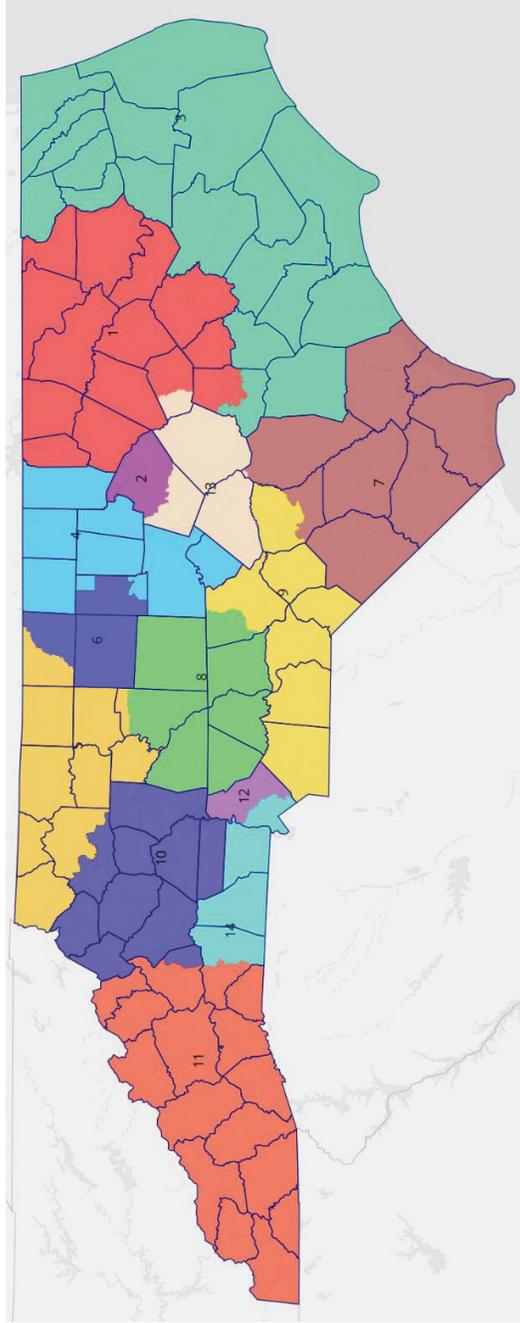
| Appendix F — Partisan & Racial Data for *Amicus'* Revisions to SL-2022-3 | | | | | | | |
| *Amicus'* Revision | | Partisan Voting History | | | Voting Age Population | | |
Dist	Total Pop	Dem	Rep	Margin	White	Hispanic	Black
1	745672	**54.23%**	44.22%	10.01%D	49.34%	6.37%	41.34%
2	745671	**63.84%**	33.63%	30.21%D	57.03%	10.60%	23.63%
3	745671	37.54%	**60.29%**	22.75%R	67.77%	8.10%	19.91%
4	745670	**66.77%**	31.25%	35.52%D	56.50%	10.94%	25.79%
5	745671	40.34%	**57.41%**	17.07%R	71.42%	8.87%	16.14%
6	745669	**55.81%**	42.11%	13.70%D	54.53%	8.69%	30.87%
7	745671	42.94%	**54.92%**	11.98%R	65.19%	7.01%	18.20%
8	745670	32.05%	**65.67%**	33.62%R	72.31%	8.95%	13.96%
9	745669	46.73%	51.01%	4.28%R	55.85%	9.33%	28.30%
10	745670	31.02%	**66.54%**	35.52%R	80.67%	6.61%	7.93%
11	745672	43.80%	**53.73%**	9.93%R	84.79%	6.17%	3.89%
12	745670	**65.69%**	31.75%	33.94%D	45.83%	12.85%	33.90%
13	745672	46.79%	50.71%	3.92%R	65.64%	10.28%	15.09%
14	745670	47.79%	49.86%	2.07%R	62.56%	9.92%	21.17%
N.C.	745671	48.32%	49.43%		63.64%	8.88%	21.37%

Appendix G

Trial Court's Revision to SL 2022-3

Interim Map for 2022 Elections—Compliant with Traditional and Partisan Criteria

8a
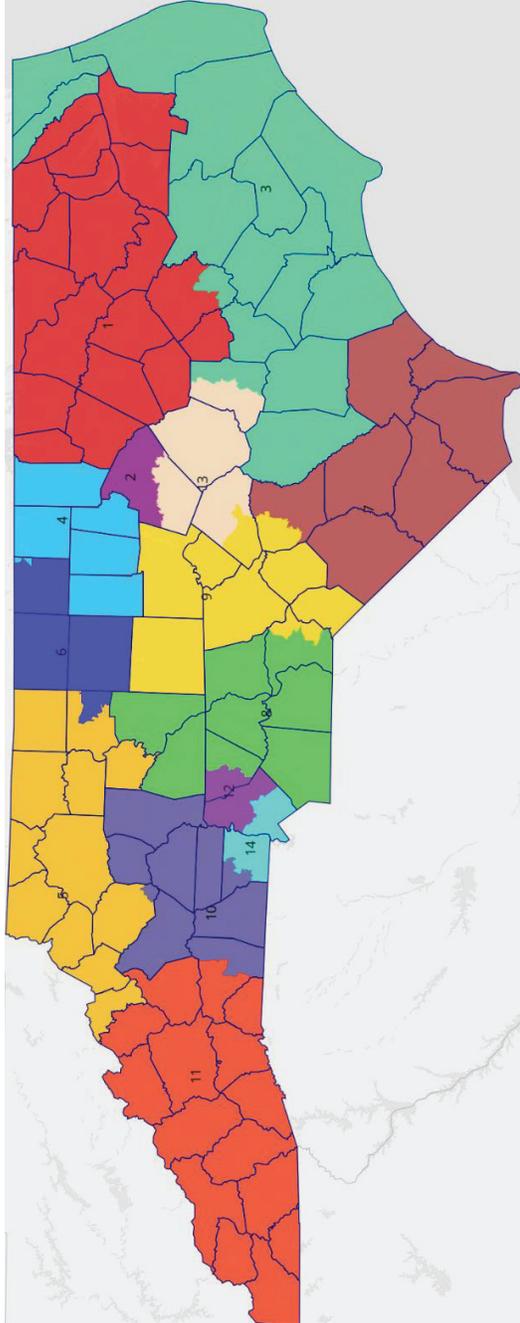
| Appendix H — Partisan & Racial Data for Trial Court's Revisions to SL 2022-3 | | | | | | | |
| Interim Map | | Partisan Voting History | | | Voting Age Population | | |
Dist	Total Pop	Dem	Rep	Margin	White	Hispanic	Black
1	745670	**54.09%**	44.38%	9.71%D	50.07%	5.86%	41.23%
2	745671	**61.54%**	35.90%	25.64%D	60.11%	9.32%	18.18%
3	745670	36.83%	**61.01%**	24.18%R	67.40%	9.34%	18.89%
4	745670	**66.37%**	31.65%	34.72%D	55.64%	10.91%	26.64%
5	745670	38.84%	**58.85%**	20.01%R	75.68%	8.15%	12.51%
6	745670	**55.24%**	42.65%	12.59%D	54.69%	7.96%	31.65%
7	745671	43.53%	**54.27%**	10.74%R	64.90%	6.26%	19.01%
8	745671	32.54%	**65.27%**	32.73%R	72.68%	8.18%	14.48%
9	745672	45.72%	**52.04%**	6.32%R	58.98%	10.73%	24.57%
10	745670	30.24%	**67.47%**	37.23%R	78.52%	6.28%	10.51%
11	745671	43.90%	**53.63%**	9.73%R	84.66%	6.16%	4.01%
12	745671	**62.76%**	34.69%	28.07%D	43.75%	13.28%	35.96%
13	745670	**49.46%**	48.15%	1.31%D	61.76%	11.21%	22.04%
14	745671	**54.91%**	42.53%	12.38%D	60.35%	11.16%	20.68%
N.C.	745671	48.32%	49.43%		63.64%	8.88%	21.37%

Appendix I

Maryland Legislature's Original Map

Enacted December 2021
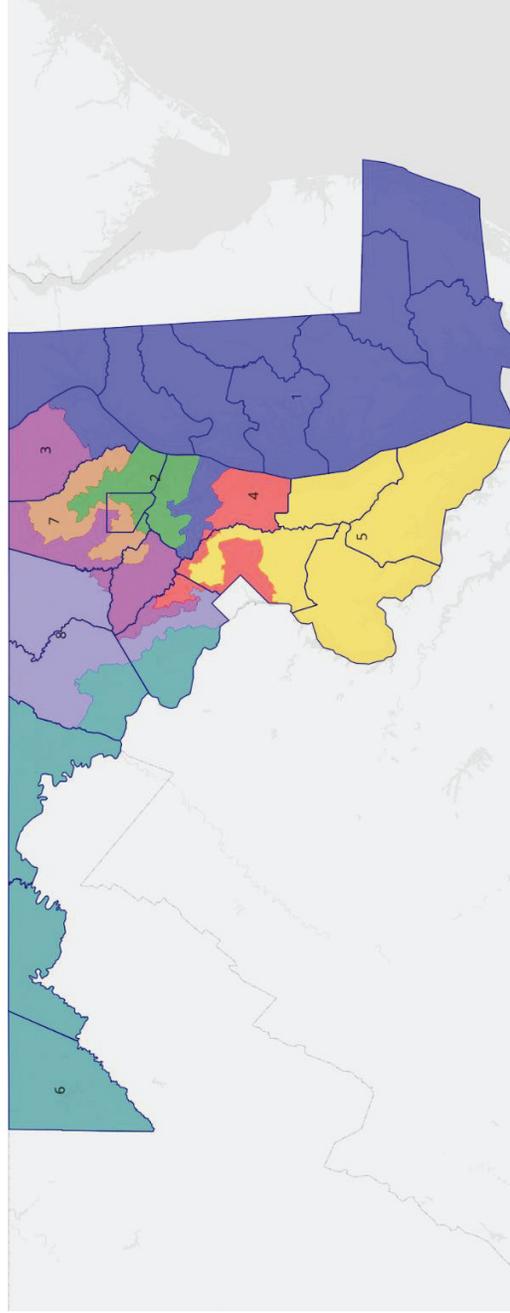
Appendix J — Partisan & Racial Data for Md. Legislature's Original Map								
Md. Dec. 2021		Partisan Voting History			Voting Age Population			
Dist	Total Pop	Dem	Rep	Margin	White	Hispanic	Black	
1	771925	43.85%	**53.15%**	9.30%R	69.56%	5.68%	19.54%	
2	771925	**53.28%**	43.53%	9.75%D	55.96%	8.96%	27.52%	
3	771926	**54.81%**	41.81%	13.00%D	60.37%	8.71%	18.43%	
4	771926	**80.41%**	17.42%	62.99%D	20.10%	17.83%	57.34%	
5	771925	**66.14%**	31.31%	34.83%D	38.28%	10.78%	44.11%	
6	771925	**54.99%**	42.01%	12.98%D	59.22%	11.99%	14.44%	
7	771926	**71.96%**	25.14%	46.82%D	34.71%	4.04%	52.64%	
8	771925	**60.27%**	36.69%	23.58%D	60.89%	13.98%	13.71%	
Md.	771923	60.33%	36.75%		49.87%	10.22%	31.01%	

11a

Appendix K

Maryland Legislature's Remedial Map

Enacted April 2021 to Comply with Traditional Criteria per Court Order
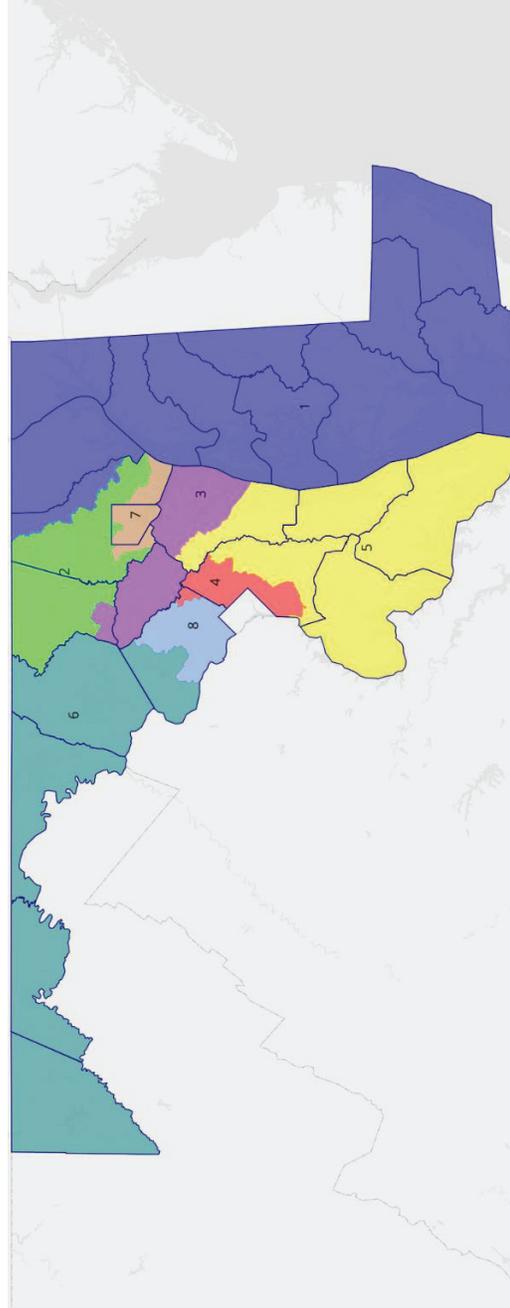
Appendix L — Partisan & Racial Data for Md. Legislature's Remedial Map							
Md. April 2022		Partisan Voting History			Voting Age Population		
Dist	Total Pop	Dem	Rep	Margin	White	Hispanic	Black
1	771925	36.92%	60.14%	23.22%R	74.98%	4.50%	15.48%
2	771926	52.53%	44.10%	8.43%D	62.39%	5.08%	24.34%
3	771925	53.51%	43.02%	10.49%D	60.61%	7.59%	18.41%
4	771925	87.35%	10.55%	76.80%D	12.31%	21.96%	59.78%
5	771924	60.91%	36.45%	24.46%D	45.65%	6.04%	42.95%
6	771926	48.94%	48.01%	0.93%D	63.57%	11.63%	13.90%
7	771926	76.78%	20.45%	56.33%D	32.47%	7.19%	54.73%
8	771926	74.41%	22.82%	51.59%D	46.87%	17.95%	18.24%
Md.	771923	60.33%	36.75%		49.87%	10.22%	31.01%