

IN THE SUPREME COURT OF THE UNITED STATES

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No. 21-1271

TIMOTHY K. MOORE, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE  
NORTH CAROLINA HOUSE OF REPRESENTATIVES, ET AL., PETITIONERS

v.

REBECCA HARPER, ET AL.

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ON WRIT OF CERTIORARI  
TO THE NORTH CAROLINA SUPREME COURT

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MOTION OF THE UNITED STATES FOR LEAVE TO  
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE,  
ENLARGEMENT OF ARGUMENT, AND DIVIDED ARGUMENT

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Pursuant to Rule 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case and that the time for oral argument be enlarged to allow the United States 15 minutes of argument time as amicus curiae supporting respondents. Petitioners and respondents consent to this motion. The United States understands that respondents will separately move to enlarge the time for argument and for divided argument. If the Court grants both that motion and this one, the time would be allotted as follows: 45 minutes

for petitioners, 15 minutes for the State Respondents, 15 minutes for the Non-State Respondents, and 15 minutes for the United States. If the Court grants this motion but not respondents' motion, the time for argument would be allotted as follows: 35 minutes for petitioners, 20 minutes for respondents, and 15 minutes for the United States.

This case concerns the scope of state legislatures' authority to make laws governing congressional elections under the Elections Clause, U.S. Const. Art. I, § 4, Cl. 1. The Elections Clause provides that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." Ibid. Petitioners contend that the Elections Clause prohibits state courts from reviewing state legislation governing federal elections for compliance with the state constitution.

The United States has filed a brief as amicus curiae supporting respondents, arguing that the text and historical context of the Elections Clause, longstanding state and federal practice, and this Court's precedent demonstrate that the Clause takes state legislatures as it finds them, subject to state constitutional constraints and state judicial review. In addition, the brief argues that even if petitioners were correct that the Elections Clause limits the role of state constitutions

and state courts when a state legislature is silent, nothing in the Clause forecloses a state legislature from itself authorizing state judicial review of its election legislation for compliance with the state constitution, as the North Carolina General Assembly has done here.

The United States has a substantial interest in this Court's resolution of the questions presented. The scope of state legislatures' power under the Elections Clause has significant implications for the administration of federal elections. In addition, as this Court has recognized, statutes Congress has enacted under the Elections Clause, including 2 U.S.C. 2a(c) and 2c, reflect its understanding of state legislatures' authority under the Clause. See Smiley v. Holm, 285 U.S. 355, 372 (1932).

The United States has previously presented oral argument as amicus curiae in cases involving interpretation of the Elections Clause and 2 U.S.C. 2a(c) and 2c. See Arizona State Legislature v. Arizona Indep. Redistricting Comm'n, 576 U.S. 787 (2015); Branch v. Smith, 538 U.S. 254 (2003). The United States' participation in oral argument in this case accordingly may be of material assistance to the Court.

Respectfully submitted.

ELIZABETH B. PRELOGAR  
Solicitor General  
Counsel of Record

OCTOBER 2022