

**In the Supreme Court of the United States**

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PHILIP E. BERGER, ET AL., PETITIONERS

*v.*

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, ET AL.

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*ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT*

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**RESPONDENTS' UNOPPOSED JOINT MOTION FOR DIVIDED ARGUMENT**

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Pursuant to Supreme Court Rules 21, 28.3, and 28.4, Respondents North Carolina State Conference of the NAACP, Chapel-Hill Carrboro NAACP, Greensboro NAACP, High Point NAACP, Moore County NAACP, Stokes County Branch of the NAACP, and Winston Salem-Forsyth County NAACP (“NAACP Respondents”), and Respondent members of the North Carolina State Board of Elections Damon Circosta, Stella Anderson, Jefferson Carmon III, Stacy Eggers IV, and Wyatt T. Tucker, Sr. (“State Respondents”) jointly file this motion for divided oral argument.

Respondents jointly request that the Court divide their argument time evenly. The division of argument time will ensure that each group of Respondents can adequately present its own distinct perspective and represent its own interests. This Court has regularly divided argument time in circumstances similar to those here, where a sovereign government and private parties are both Respondents in this Court. Divided argument is

especially appropriate because while the NAACP and State Respondents are both Respondents in this Court in connection with the Rule 24 intervention questions on which the Court granted certiorari, Respondents are not aligned on the merits of the underlying lawsuit: NAACP Respondents are the plaintiffs below and State Respondents are the defendants below. Petitioners consent to the relief sought in this motion.

1. NAACP Respondents brought this lawsuit in December 2018 against State Respondents—members of the North Carolina Board of Elections—alleging that North Carolina’s new voter ID law, S.B. 824, violated the U.S. Constitution and the Voting Rights Act. State Respondents are represented by the North Carolina Attorney General and North Carolina Department of Justice and have been vigorously defending S.B. 824 on the merits.

2. Petitioners, the leaders of the state Senate and House of Representatives, sought to intervene as of right under Federal Rule of Civil Procedure 24(a)(2) and alternatively sought permissive intervention under Rule 24(b). Petitioners asserted (as relevant to the questions now presented before this Court) that state law assigns them the right to defend the constitutionality of state laws as an “agent of the State” alongside the North Carolina Attorney General, that State Respondents and the Attorney General were not adequately representing the State’s interest in defending the constitutionality of state laws, and that Petitioners could intervene as of right under Rule 24(a)(2) on that basis.

3. NAACP Respondents opposed intervention, contending, *inter alia*, that Petitioners had not satisfied Rule 24(a)(2)’s criteria for intervention as of right because the State Respondents adequately represented any protectable interest that Petitioners

sought to assert. NAACP Respondents also opposed permissive intervention under Rule 24(b), including on the ground that it would cause delay and prejudice.

4. State Respondents stated that they did not oppose intervention, but maintained that the Attorney General was adequately representing the State's interest in defending S.B. 824.

5. NAACP and State Respondents have been represented by separate counsel throughout this litigation and continue to be separately represented, filed separate briefs throughout all intervention-related proceedings in the district court and the court of appeals, argued separately in the court of appeals both at the panel and *en banc* stages, and have filed separate briefs in this Court.

6. NAACP Respondents and State Respondents have distinct perspectives on the questions presented and represent distinct interests in this case (indeed, they are adverse to one another with respect to the claims brought by NAACP Respondents). Although all Respondents support affirmance on the questions presented, they offer distinct arguments in their briefs and, as plaintiffs (NAACP Respondents) and defendants (State Respondents) necessarily have unique perspectives on the consequences of intervention by additional defendants in this case.

7. Dividing argument time as proposed will ensure that each set of Respondents may fully present their distinct interests and that the Court will receive the benefit of Respondents' distinct perspectives and arguments. This is particularly true in the circumstances of this case, where Respondents include sovereign governments and private

parties with unique interests and where Respondents are on opposite sides of the “v.” on the underlying merits of the case.

8. The Court has regularly granted motions for divided argument when parties represent the distinct perspectives of government and private litigants. *See, e.g., Trump v. New York*, 141 S. Ct. 870 (2020) (mem.) (State of New York and private appellees); *Fulton v. City of Philadelphia*, 141 S. Ct. 230 (2020) (mem.) (City of Philadelphia and private respondent); *Dep’t of Homeland Security v. Regents of the Univ. of the Univ. of Cal.*, 140 S. Ct. 398 (2019) (mem.) (private respondents and state respondents); *Department of Com. v. New York*, 139 S. Ct. 1543 (2019) (mem.) (government respondents and private respondents); *Janus v. American Fed’n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 974 (2018) (mem.) (state respondents and AFSCME Council 31); *Masterpiece Cakeshop, Ltd., v. Colorado Civil Rights Comm’n*, 138 S. Ct. 466 (2017) (State of Colorado and private respondents).

9. Petitioners consent to the relief sought in this motion.

For the foregoing reasons, NAACP Respondents and State Respondents jointly request that the Court divide oral argument time equally between them.

Respectfully submitted,

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