No. No. 261A18-3 TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

NORTH CAROLINA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE and CLEAR AIR CAROLINA, Plaintiffs-Appellees, v. TIM MOORE, in his official capacity, and PHILIP BERGER, in his official capacity, Defendants-Appellants	)	From Wake County No. 18 CVS 9806

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MOTION OF NORTH CAROLINA PROFESSORS OF CONSTITUTIONAL LAW ENRIQUE ARMIJO, JOSEPH BLOCHER, JOHN CHARLES BOGER, GUY-URIEL CHARLES, DONALD CORBETT, MICHAEL KENT CURTIS, APRIL G. DAWSON, WALTER E. DELLINGER, III, MALIK EDWARDS, SHAWN E. FIELDS, SARAH LUDINGTON, WILLIAM P. MARSHALL, GENE R. NICHOL, WILSON PARKER, JEDEDIAH PURDY & THEODORE M. SHAW AS *AMICI CURIAE*

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The North Carolina Professors of Constitutional Law listed herein respectfully move the Court, pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure, for leave to file the accompanying brief as *amici curiae* in support of Plaintiff-Appellee North Carolina State Conference of the National Association for the Advancement of Colored People. As required by Rule 28 (i)(2), *amici* are filing their proposed brief contemporaneously with this motion.

Both the motion and the brief are being filed within the time limits allowed for the plaintiff-appellee to file its brief.

In support of their motion, *amici* show the following:

NATURE OF THE INTEREST OF *AMICI CURIAE*

Movants are scholars and professors of law who have been deeply involved in issues of constitutional law for many decades. They regularly have taught basic principles of American constitutional law to first-year law students and advanced principles of constitutional law to upper level students in North Carolina and elsewhere. Many have researched and written extensively on constitutional issues. Some have written, taught, and litigated specifically on issues involving the North Carolina Constitution. They come from each of North Carolina's six public and private law schools. (See Exhibit A, listing all *amici* by school and title).

REASONS WHY AN *AMICUS CURIAE* BRIEF IS DESIRABLE

The appeal before the Court addresses core issues of constitutional law including: the proper occasions upon which the state judiciary should exercise its authority; the reasons for the constitutional decision to divide and separate legislative, executive, and judicial powers under the North Carolina constitution; the use of inter-branch checks and balances as one key constitutional limit to prevent any abuse of separated power; the deliberately exacting process, adopted by the people of North Carolina, for making constitutional changes to their foundational document; and the limited circumstances under which disputed constitutional issues should be deemed "political questions" beyond the exercise of judicial review.

These are all matters on which the proposed *amici* are seasoned scholars, authors, teachers and litigants. Since these are issues sharply disputed by the parties, *amici* hope they might be of assistance to a Court charged, in this appeal, with a "recurrence to fundamental principles." N.C. CONST., Art. I, § 35.

QUESTIONS OF LAW TO BE ADDRESSED IN THIS *AMICUS* BRIEF

Amici curiae will address the constitutional context in which the proposed North Carolina constitutional amendments are being challenged, including: the authority of the State judiciary to address and resolve these serious constitutional issues involving a coordinate branch of government; whether and when doing so might violate State constitutionally-ordained separation of powers; and whether the unique circumstances here justify the Court in addressing and resolving the petitioner's challenge to the 2018 submission of the proposed constitutional amendments. *Amici* will address the related question whether a political party that has been held to have illegally gerrymandered the General Assembly by race can take deliberate advantage of the resulting, temporary super-majority status to put forward changes to the foundational legal framework of State governance that will afford it a future, entrenched electoral advantage even after it no longer a political majority.

THE POSITION OF *AMICI CURIAE* ON THESE QUESTIONS OF LAW

Amici will contend that the Court has State constitutional authority to resolve unclear questions of state constitutional law, even when those questions require the Court to pronounce on the powers of, or constraints upon, a coordinate branch of

government. *Amici* will contend that to address such questions does not violate, but instead properly maintains, the separation of powers required by the State constitution. *Amici* will finally contend that, under the unusual circumstances here, the efforts by a majority party in the General Assembly to entrench its power by using its illegally obtained, temporary, and artificially-inflated three-fifths majority status in each chamber to propose substantial constitutional modifications—just before it lost its supermajority status—violates both the core intent of, and the careful procedural safeguards provided within, the North Carolina Constitution to preserve the sovereignty of the people.

CONCLUSION

For these reasons, *amici curiae* respectfully request that the Court allow this motion and accept for filing the conditionally filed *amicus* brief, attached to this motion as Exhibit B, in support of petitioners.

Respectfully submitted this 2nd day of December, 2020

s/Colin Shive

_____

Colin Shive
Tharrington, Smith LLP
N.C. Bar No. 43202
Wells Fargo Building
150 Fayetteville Street, Suite 1800
Raleigh, NC 27601
Tel. No. 919-821-4711
Fax No. 919-829-1583
CShive@tharringtonsmith.com

N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it:

s/Robert F. Orr

Robert F. Orr
Attorney at Law PLLC
N.C. Bar No. 6798
3434 Edward Mill Road, Suite 112-372
Raleigh, NC 27601
Tel. No. 919-962-8513
Fax No. 919-962-1277
rforr1946@gmail.com

Attorneys for *Amici Curiae/Movants*

EXHIBIT A

LIST OF *AMICI*

Enrique Armijo
Elon University School of Law
Associate Dean for Academic Affairs & Professor of Law
Email: earmijo@elon.edu
Telephone: (o) 336-278-9327

Joseph Blocher
Duke University School of Law
Lanty L. Smith '67 Professor of Law
Email: blocher@law.duke.edu
Telephone: (o) 919-613-7018

John Charles Boger
University of North Carolina at Chapel Hill School of Law
Wade Edwards Distinguished Professor of Law Emeritus
Email: johncharlesboger@gmail.com
Telephone: (Cell) 919-619-4225

Guy-Uriel E. Charles
Duke University School of Law
Edward & Ellen Schwarzman Professor of Law
Email: charles@law.duke.edu
Telephone: (o) 919-613-7191

Donald W. Corbett
North Carolina Central University School of Law
Associate Professor of Law
Email: dcorbett@nccu.edu
Telephone: (o) 919-530-7159

Michael Curtis
Wake Forest University School of Law
Judge Donald L. Smith Professor in Constitutional & Public Law

(Emeritus as of January 1, 2021)
Email: curtismk@wfu.edu
Telephone: (o) 336-758-5714

April G. Dawson
North Carolina Central University School of Law
Associate Dean of Academic Affairs & Professor of Law
Email: adawson@nccu.edu
Telephone: (o) 919-530-6502

Walter E. Dellinger III
Duke University School of Law
Douglas B. Maggs Professor of Law
Email: wdellinger@omm.com
Telephone: (DC off.) 202-383-5319; (Duke Law off.) 919-613-8535

Malik Edwards
North Carolina Central University School of Law
Associate Dean for Faculty Affairs & Professor of Law
Email: medwar49@nccu.edu
Telephone: (o) 919-530-7450

Shawn E. Fields
Assistant Professor of Law
Campbell University
Norman Adrian Wiggins School of Law
Assistant Professor
Email: sfields@campbell.edu
Telephone: (o) 919-865-4669

Sarah Ludington
Duke University School of Law
Clinical Professor of Law
Email: ludingtons@law.duke.edu
Telephone (o): 919-619-5255

William P. Marshall
University of North Carolina at Chapel Hill School of Law

William Rand Kenan, Jr. Distinguished Professor of Law
Email: wpm@email.unc.edu
Telephone: (o) 919-843-7747

Gene R. Nichol
University of North Carolina at Chapel Hill School of Law
Boyd Tinsley Distinguished Professor of Law
Email: gnichol@email.unc.edu
Telephone: (o) 919-962-5928

Wilson Parker
Wake Forest University School of Law
Professor of Law
Email: parkerjw@wfu.edu
Telephone: (o) 336-758-5708

Jedediah S. Purdy
Columbia Law School
William S. Beinecke Professor of Law
(Former Robinson O. Everett Professor at Duke Law)
Email: jpurdy@law.columbia.edu
Telephone: (o) 212-854-0593

Theodore M. Shaw
University of North Carolina at Chapel Hill School of Law
Julius L. Chambers Distinguished Professor of Law
Email: tedshaw@email.unc.edu
Telephone: (o) 919-843-4356

No. 261A18-3 TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

NORTH CAROLINA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE Plaintiffs-Appellee, v. TIM MOORE, in his official capacity, and PHILIP BERGER, in his official capacity, Defendants-Appellants.	)	From Wake County No. 18 CVS 9806

BRIEF OF NORTH CAROLINA PROFESSORS OF CONSTITUTIONAL LAW ENRIQUE ARMIJO, JOSEPH BLOCHER, JOHN CHARLES BOGER, GUY-URIEL CHARLES, DONALD CORBETT, MICHAEL KENT CURTIS, APRIL G. DAWSON, WALTER E. DELLINGER, III, MALIK EDWARDS, SHAWN E. FIELDS, SARAH LUDINGTON, WILLIAM P. MARSHALL, GENE R. NICHOL, WILSON PARKER, JEDEDIAH PURDY & THEODORE M. SHAW AS *AMICI CURIAE*

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INTRODUCTION

We are North Carolina professors of constitutional law, and we offer this brief as *amici curiae* to assist the Court in its consideration of the important constitutional issues presented in this appeal.[1] We take no position on the merits of any of these amendments. Indeed, our consideration of those merits might well reveal differences among us. Yet we agree unanimously with the Superior Court below that the procedures that brought these amendments to the people in November of 2018 were fatally flawed. In our considered view, that court's order of February 22, 2019 should be affirmed in its entirety. Neither of the opinions offered by the majority members of the North Carolina Court of Appeals appears fully to appreciate the crucial difference between the General Assembly's ordinary authority to enact legislation and the exacting, supermajority requirements that the North Carolina Constitution establishes as a condition precedent to a vote by the people of the State on whether to alter their fundamental charter.

The North Carolina Constitution contains a variety of structural procedures to protect the sovereignty of the people against legislative or other abuse. The regrettable pattern of legislative misconduct by the defendants—uncovered and thoroughly assessed by multiple federal courts and North Carolina state courts over

[1] No person or entity—other than amicus curiae, its members, and its counsel—have directly or indirectly written this brief or contributed money for its preparation.

the past eight years—fatally tainted the 2018 amendment process under challenge here.

If the policies put forward in the challenged amendments continue to appear worthy, then a properly constituted legislature can resubmit them through appropriate processes for the people's approval. If their adoption was merely the product of unconstitutional legislative gerrymandering, however, they deserve no place among the constitutional protections in which the people of North Carolina place their trust.

I. This Court is Plainly Authorized to Assure Legislative Compliance with the Special Requirements Prescribed by the North Carolina Constitution Before Submitting Constitutional Amendments To a Vote by the People.

Since the Revolution of 1776, American law at both state and federal levels has distinguished between 'ordinary' legislation and the 'higher law' reflected in the people's constitutions. Mindful of dangers of the absolute power they had suffered under King George, American drafters framed governments under which ultimate authority would lie with the people themselves, with practical daily authority allocated among chosen legislative, executive, and judicial actors. *See* N.C. CONST. OF 1776, DECLARATION OF RIGHTS §§ 1, 2 & 4.

As a check on the reemergence of tyranny, these constitutions afforded each branch structural protections against any attempt by a co-equal branch to exceed its designated role. The legislative branch was of course authorized to draft, debate, and pass legislation. Yet the Constitution contemplated judicial review of that

legislation as an appropriate check, in order to assure compliance with state constitutional demands. Indeed, the North Carolina judiciary, writing in *Bayard v. Singleton*, 1 N.C. 5 (1787), asserted its judicial authority to invalidate an unconstitutional legislative act some sixteen years before Chief Justice John Marshall's celebrated decision in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).[2]

The North Carolina Constitution of 1776 initially made no provision for amendments at all. JOHN V. ORTH & PAUL MARTIN NEWBY, THE NORTH CAROLINA CONSTITUTION 13 (2d ed. 2013). Yet in the 1830s, when the state's robust population growth in Piedmont counties and other economic changes prompted citizens to demand adjustments to the original document, delegates from across the State gathered in Raleigh in 1835 to adopt a series of changes to the 1776 instrument. *Id.* Among those changes was a set of provisions specifying how future amendments might be added to the constitutional text. To safeguard the people's 'higher law' from unreflective and precipitous modification, the delegates erected high walls and precise checkpoints: under a new Article IV, § 1, cl. 2.1 & 2, constitutional amendments could be brought forward either through future conventions—to be authorized only after two-thirds of each house had voted to convene them—or, alternatively, through specific amendments that could be "proposed to the voters by

[2] Judge Dillon's opinion below suggested that the declaration in N.C. CONST. art. I, § 6—that "legislative [] and judicial powers of the State government shall be forever separate and distinct from each other"—should somehow preclude judicial review of any legislative action in the performance of its "core functions." *North Carolina State Conference of NAACP v. Moore*, No. COA19-384, __N.C. App. __, 849 S.E.2d 87, 94 (2020). From the time of *Bayard v. Singleton*, of course, this Court has rejected the proposition that the General Assembly may proceed without some meaningful judicial review to assure that the legislature is indeed acting within its constitutionally established bounds.

the General Assembly [only] if adopted at two successive sessions, with an intervening election, by majorities [in the General Assembly] of three-fifths and two-thirds, respectively." ORTH & NEWBY, *supra*, at 15-16. Both methods imposed extraordinarily high prerequisites to amendment.

Following the Civil War, and at the prompting of the federal Congress,[3] delegates assembled in Raleigh in 1868 to draft a new, Reconstruction-era constitution. ORTH & NEWBY, *supra*, at 19. Initially, no changes were made to the 1835 amendment process. *Id.* at 23. Seven years later, however, during a state constitutional convention called in 1875 to consider thirty proposed amendments to the 1868 document, a proposal was put forward that in the future, "the General Assembly by a three-fifths vote of each house could submit an amendment to the voters at the next election." *Id*. at 26 (describing what thereafter became N.C. CONST., Art. XIII). Although there was sharp disagreement and some close convention votes on whether the new super-majority threshold should be set at two-thirds (as under the 1835 constitution) or three-fifths (as was eventually agreed),[4] all delegates agreed that the amendment process deserved higher protection than would be offered by reliance on a mere legislative majority.

North Carolina's Constitution assigns the legislature a crucial deliberative and gatekeeping role in the constitutional amendment process. The requirement of

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[3] ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863-1877, 276-77 (1988).

[4] See JOURNAL OF CONSTITUTIONAL CONVENTION OF STATE OF NORTH CAROLINA HELD IN 1875, 185-86 (Raleigh, Josiah Turner 1875).

a three-fifths supermajority of both houses as a condition precedent for popular vote on an amendment ensures that only those topics that the people's representatives overwhelmingly identify as meriting constitutional status can be introduced into the State's fundamental law. This provision protects the constitution itself, and thus the people's sovereignty, against manipulation by an unrepresentative legislature and against rash popular decision by a fleeting or inattentive majority. Ordinary laws, however rash, can be reformed or undone by a simple majority vote of a succeeding legislative majority. By contrast, changes to the state's fundamental constitutional design are designed to be less frequent and more enduring. The Constitution's super-majority requirement for amendments has long stood as constitutional assurance against capricious changes in the state's fundamental design—a kind of constitutional immune system maintaining the integrity of popular sovereignty.[5]

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[5] In describing the analogous federal amendment process, Justice Joseph Story expressed the Framers' hope that

> the means of amendment might avert, or at least have a tendency to avert, the most serious perils, to which confederated republics are liable . . . Two thirds of congress, or of the legislatures of the states, must concur in proposing, or requiring amendments to be proposed . . *Time is thus allowed, and ample time, for deliberation . . . They cannot be carried by surprise, or intrigue, or artifice.*

JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 959 (1833) (emphasis added).

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II. The General Assembly Acted in 2011 To Create A Host of Racially Gerrymandered Legislative Districts. Once Those Districts Were Declared Unconstitutional in 2017, The Superior Court Properly Concluded These Representatives Could No Longer Fairly Be Counted To Meet The Special, Super-Majority Requirement Under Article XIII, § 4 That Alone Permits The Voters to Consider Permanent Changes To the North Carolina Constitution.

The present case presents a major test of North Carolina's time-honored constitutional guard against overhasty tampering with basic structures of state governance. As both Judge Stroud and Judge Young noted in their Court of Appeals opinions, and Judge Collins also underscored in his Superior Court opinion, this appeal presents an issue of first impression. 849 S.E.2d at 99 (Stroud concurrence); *id*. at 104 (Young dissent); *NAACP v. Moore*, Order, No. 18 CVS 9806, Wake Co. Super. Ct., February 22, 2019, at 10; R. 191. Yet the constitutional issues it presents, we respectfully submit, are simple and straightforward.

The relevant facts began when North Carolina's newly elected legislative majority in 2011 undertook the state's required decennial legislative redistricting.[6] 2011 N.C. Sess. L. 402 and Sess. L. 404. The General Assembly majority chose to carry out its responsibilities in what has since been adjudicated to be a grossly unconstitutional manner. *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016), *aff'd*, 581 U.S. __, 137 U.S. 2211 (2017) (per curiam); *see also Covington v. North Carolina*, 283 F. Supp.3d 410, 447-58 (M.D.N.C. 2018), *aff'd sub nom. North Carolina v. Covington*, 585 U.S. __, 138 S.Ct. 2548 (2018). The General Assembly first drew and then approved boundary lines for state senate and state house

[6] Judge Dillon agreed that "a proper understanding of the issue before us requires an understanding of the gerrymandering issue resolved by *Covington* . . . ." 849 S.E.2d at 90.

districts that created a broad pattern of racial gerrymanders, directly affecting at least 28 of North Carolina's state districts, and requiring a "remedial map to cure the 2011 unconstitutional racial gerrymander [that] contained 117 redrawn legislative districts, more than two-thirds of the districts in both the House (81, or 68%) and Senate (36, or 72%)," as a three-judge federal district court panel eventually found. *NAACP v. Moore*, Order, *supra*, at 4 (R. 184).

The federal court described this pattern of redistricting misconduct as "among the largest racial gerrymanders ever considered by a federal court." *Covington*, 270 F. Supp.3d at 884. The Supreme Court of the United States agreed with those conclusions in 2017 and 2018 and upheld the principal factual findings and legal conclusions of the district court. *North Carolina v. Covington*, *supra,* 138 S.Ct. 2548 (2018). It then ordered the General Assembly to redraw the lines in a constitutionally permissible fashion.[7]

The General Assembly, however, delayed providing a constitutionally sufficient response. Yet it did more than simply delay. In the closing hours of the 2018 legislative term, it set out deliberately to capitalize on its condemned-but-still-artificially-elevated electoral numbers. Relying on strict party discipline, the leadership pushed forward a series of six hastily announced amendment proposals. *See NAACP v. Moore*, Order, at 4 (R. 184). Among them was one that would require

[7] Judge Stroud observed that the federal courts in *Covington* did not address the limits on the legislative authority of this illegally constituted General Assembly and "explicitly declined to address this 'unsettled question of state law[,]' and thus did not create any state law for the trial court or this Court [] to follow." 849 S.E.2d at 100. Of course the federal judiciary properly declined to resolve unsettled issues of North Carolina law on the residual authority of an illegally constituted General Assembly. Those issues are appropriately reserved for North Carolina courts to address and resolve, and it is to those issues that this Court must now turn.

photographic identification requirements in all future voters elections. N.C. SESSION LAWS 2018-128 Another set a cap on the maximum income tax that could be adopted. N.C. SESSION LAWS 2018-119.

Even with an unconstitutionally augmented majority, the defendants barely managed to secure the constitutionally-required 60 percent support necessary to place the proposed amendments before the people. In the North Carolina State House, the proposal for a voter ID amendment prevailed *by only two votes*, and in the Senate, *by only three*. *NAACP v. Moore*, Order at 4 (R. 184). Without the votes of illegally selected representatives, no new amendments could have been placed on the November 2018 ballot; the high threshold so carefully erected by NORTH CAROLINA CONST. Art. XIII, § 2, would not have been met.

As noted, this bold plan was conceived and executed as a last-minute gambit; it went forward under a heavy cloud of already-adjudicated unconstitutionality and despite widespread public objection. Yet the defendants now insist, the deed done, that they should be home free, and that no other branch of North Carolina government has any authority to review the constitutionality of their behavior or redress whatever constitutional damage it may have inflicted. They are mistaken.

III. The 'Political Question Doctrine Does Not Apply Here and Does Not Forbid the Judiciary From Performing Its Customary Role of Assuring Compliance by the Political Branches with the Constraints Imposed By The People's Constitution.

The Court of Appeals majority appears to have relied in part upon an 81-year-old case on 'political question doctrine' in support of its position that plaintiffs'

claims are nonjusticiable.[8] Yet that doctrine does not apply here; its proper reach has been clarified since 1939, both by the federal courts and by this Court, to allow judicial review of cases such as the present one. The most influential modern federal statement on the political question doctrine appears in Justice Brennan's opinion for the Court in *Baker v. Carr*, 369 U.S. 186 (1962). Justice Brennan began by observing that "the mere fact that [a lawsuit] seeks protection of a political right does not mean it presents a political question," a view that would amount to "'little more than a play upon words." 369 U.S. at 209. Instead, he fashioned a series of *substantive,* overlapping 'tests' often cited and relied upon by North Carolina courts as well:[9]

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

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[8] Judge Dillon cited a 1939 decision, *Leonard v. Maxwell*, 216 N.C. 89, 3 S.E.2d 316 (1939), in which, he suggests:

> [o]ur high Court recognized that "judicial power" does not extend to the power to declare retroactively that our General Assembly lacked the authority to pass bills simply because some legislators were elected from unconstitutionally-designed districts . . . The Court characterized the question as a "political one, and there is nothing courts can do about it" and that "the authorities are against it." *Id*. at 99, 3 S.E. 2d at 324 (stating that courts "do not cruise in nonjusticiable waters").

849 S.E.2d at 94.

[9] *See*, *e.g.*, *Cooper v. Berger*, 370 N.C. 392, 407-08, 809 S.E. 2d 98, 107 (2018).

Id. at 217.[10] As Judge Young's dissent below noted, citing *Woodard v. Carteret Cnty.*, 270 N.C. 55, 153 S.E.2d 809 (1967), North Carolina courts have since largely agreed with and followed the *Baker v. Carr* approach. 849 S.E.2d at 104.

Beginning our examination with *Baker v. Carr*'s first criterion, we note that while the text of N.C. CONST. Art. XIII, § 4 does 'demonstrably commit' to the General Assembly the *political* task of marshaling at least a three-fifths vote in each chamber for any proposed amendment, it does not commit to that body the discretionary and unreviewable assessment of whether the constitutional obligation has been met. A thought experiment: were the State Senate ever to assert that a vote by 25 of its 45 members (55.5%) was "close enough" to meet the North Carolina constitutional threshold, would that assertion be judicially reviewable? Of course it would. Checks and balances surely forbid the legislature from making itself sole judge of its own compliance with constitutional standards. Instead, that "'delicate exercise in constitutional interpretation . . . is a responsibility of [the judicial branch] as ultimate interpreter of the Constitution.'" *Cooper v. Berger, supra,* 370 N.C. at __, 809 S.E. 2d at __ (2018) (quoting *Baker v. Carr*, 369 U.S. at 211).

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[10] The Supreme Court's recent invocation of the political question doctrine to dismiss the plaintiffs' claims in *Rucho v. Common Cause*, 588 U.S. __, 139 S. Ct. 2484 (2019), has no bearing on this appeal. In *Rucho*, a majority of the Court held that partisan gerrymanders were not justiciable *in federal courts* because of a perceived lack of judicially manageable standards for discerning which gerrymanders were "too partisan." The Chief Justice twice took pains, however, to confine his opinion to federal courts, and to distinguish partisan gerrymander claims, which the majority deemed *nonjusticiable*, from racial gerrymander claims and one-person-one-vote claims, which the Court has long held *are* justiciable in federal and state courts and do *not* to raise political questions. 139 S. Ct. at __ .

Nor does this case require resort to any undiscoverable or unmanageable standards. Though Judge Dillon's and Stroud's opinions would have it otherwise, the Superior Court drew a clear and narrow line while avoiding any boundless, sweeping principle. Its careful decision was limited to the legal consequences that flow from a final adjudication

> by the United States Supreme Court that the General Assembly was an illegally gerrymandered body. *At that time*, . . . the General Assembly lost its claim to popular sovereignty . . Curing this widespread and sweeping racial gerrymander required that over two-thirds of the North Carolina House and Senate districts be redrawn. *Thus, the unconstitutional racial gerrymander tainted the three-fifths majorities required by the state Constitution before an amendment proposal can be submitted to the people for a vote . . . .*

Superior Court Order at 11 (R. 191) (emphasis added).

Judges Dillon and Stroud, along with the defendants, raised the specter that this decision might somehow call into question prior North Carolina amendments or statutes approved years or even decades ago during the pendency of earlier redistricting legislation. 849 S.E.2d at 96 (Dillon opinion); *id.* at 102-03 (Stroud concurrence); *see also* Def. Br. below at 28-29. Yet the Superior Court below never purported to extend its narrow holding (1) to invalidate ordinary legislation, even laws enacted by a racially gerrymandered legislature;[11] or (2) to bring into question even those constitutional amendments proposed by a gerrymandered legislature and adopted by the people *before* final adjudication of a redistricting challenge. The

[11] The defendants point to a challenge in the 1930s, in which the parties unsuccessfully invoked a claim that the legislature that imposed a sales tax had itself been malapportioned, *Leonard v. Maxwell*, 216 N.C. 89, 3 S.E.2d 316 (1939); *see* Def. Br. at 14-15. The difference between that challenge to a legislative change in state tax law change and the present challenge to the state constitution amendment process is clear cut and decisive.

standard recognized by the Superior Court in this case is, in sum, exceedingly narrow and easily managed in practice.

Despite suggestions by the Court of Appeals majority that the Superior Court had engaged a "blue pencil" review—choosing to approve some legislative actions of the General Assembly but not others, *see* 849 S.E.2d at 96 (Dillon opinion), delimiting legislative action only "to exercise constitutional powers which the judiciary determines are necessary "to avoid chaos and confusion," *id.* at 95—or that the trial court may have usurped "the authority to declare new law which suit[ed its] own policy preferences," *see id.* at 96 (Stroud concurrence), the Superior Court's order did nothing of the sort. To the contrary, it forbade only one, special and limited subspecies of legislative action following a final adjudication that it *had been* sweepingly racial gerrymandered: the initiation of new constitutional amendments until such time as *the legislature* could be reconstituted in a constitutionally lawful manner.

The defendants alternatively worked to conjure up an aura of 'judicial policy-making' by stressing that only the voter identification and tax cap amendments were invalidated below, leaving undisturbed simultaneously adopted hunting and fishing and victims' rights amendments. (Def. Br. below at 20 & n. 6). Did the Superior Court somehow pick and choose among the amendments it struck down? It did not—it would have been judicial abuse to reach out and address these other amendments which the present plaintiffs chose not to challenge. The court below exercised only the traditional 'policy choice' not to anticipate or decide future

constitutional issues that were not raised by the parties below nor necessary for resolution of the case. *See generally TVA v. Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 341-45 (1936) (Brandeis, J., concurring).

In summary, although the circumstances of this litigation are extraordinary, the principles governing it are straightforward. To secure the North Carolina Constitution against hasty or manipulated amendment, any proposed amendment must follow a two-step process. First, it must be approved by three-fifths of both houses of the state legislature. Only then may it be placed before the people. When those houses have been finally adjudicated to be the products of sweeping unconstitutional gerrymandering, they must await new, constitutionally valid elections before they may resume their special role as safeguard of the people's sovereignty by deliberating upon and proposing new amendments to the state's fundamental law.

CONCLUSION

The amendments under challenge here should never have been placed on the ballot in November of 2018. Yet this appeal comes to the Court before any "chaos and confusion" have arisen or any irrevocable actions undertaken to implement these void amendments.[12] As *amici*, we urge the Court to assume the responsibility it has exercised since 1787 in *Bayard v. Singleton*, reverse the decision of the Court of Appeals, and affirm the order of the Superior Court below.

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[12] Two lawsuits, one state and one federal, enjoined the enforcement of North Carolina's recently enacted voter identification requirements during the November 2020 election cycle. *Holmes v. Moore*, 840 S.E.2d 244 (2020); *North Carolina State Conference of the NAACP v. Cooper*, 430 F. Supp.3d 15 (M.D.N.C. 2019).

Respectfully submitted this 2nd day of December, 2020.

THARRINGTON SMITH, LLP

Electronically Submitted
Colin A. Shive
N.C. Bar No. 43202
cshive@tharringtonsmith.com

N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it:

Robert F. Orr
N.C. Bar No. 6798
orr@rforrlaw.com

No. 261A18-3 TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

NORTH CAROLINA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE Plaintiffs-Appellee, v. TIM MOORE, in his official capacity, and PHILIP BERGER, in his official capacity, Defendants-Appellants.	From Wake County No. 18 CVS 9806

WORD COUNT CERTIFICATION

Pursuant to Rule 28(j) of the Rules of Appellate Procedure, I hereby certify that the foregoing brief, which is prepared using a proportional font, is less than 3,750 words (excluding cover, indices, tables of authorities, appendices, certificates of service, and this certificate of compliance) as reported by the word-processing software.

Respectfully submitted this 2nd day of December, 2020.

THARRINGTON SMITH, LLP

Colin A. Shive
N.C. Bar No. 43202
cshive@tharringtonsmith.com

CERTIFICATE OF SERVICE

Pursuant to Rule 26 of the North Carolina Rules of Appellate Procedure, I hereby certify that the foregoing document has been filed with the Clerk of the North Carolina Supreme Court by electronic submission. I further certify that a copy of this document has been duly served upon the following counsel of record by email:

David Neal
Kimberley Hunter
Southern Environmental Law Center
601 West Rosemary Street, Suite 220
Chapel Hill, NC 27516-2356
dneal@selcnc.org
khunter@selcnc.org

Irving Joyner
Post Office Box 374
Cary, NC 27512
ijoyner@nccu.edu

Counsel for Plaintiff-Appellant

Noah H. Huffstetler, III
D. Martin Warf
Nelson Mullins Riley & Scarborough LLP
GlenLake One, Suite 200
4140 Parklake Avenue
Raleigh, NC 27612
noah.huffstetler@nelsonmullins.com
martin.warf@nelsonmullins.com

Counsel for Defendants-Appellees

This 2nd day of December, 2020.

Electronically Submitted
Colin A. Shive