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LDF Files Amicus Brief in Critical *Moore v. Harper* Redistricting Case Before the U.S. Supreme Court

Today, the [Legal Defense Fund](#) (LDF) filed an [amicus brief](#) in *Moore v. Harper*, the North Carolina redistricting case regarding the so-called “independent state legislature” theory that will be argued before the United States Supreme Court on December 7. The theory is based on the dangerous view that the Elections Clause of the federal Constitution gives the state legislature, with no oversight by state courts, the authority to set the “Times, Places and Manner of holding” federal elections. In its most extreme interpretation, the doctrine says that a state supreme court can never strike down a state election law—no matter how unlawful or discriminatory it is—and that the governor, similarly, could never veto an election bill.

“If the Supreme Court adopts the independent state legislature doctrine, it would potentially unleash a tidal wave of increasingly suppressive and discriminatory voting laws that would largely go unchecked and severely limit the ability to bring critical voting rights litigation in state courts, which, as history has repeatedly shown, will most adversely impact voters of color, especially Black voters who have long been the target of discriminatory voting laws.” said LDF President and Director-Counsel Janai Nelson. “State courts and state constitutions are fundamental to protecting our democracy and our nation’s democratic institutions. This ill-imagined theory would eliminate the only avenue available to voters to challenge the extreme partisan gerrymandering that has overtaken Congressional redistricting, would throw state elections laws into chaos, and provide no method of checks and balances from state courts or governors over election-related litigation.”

“The 2020 Census revealed that the U.S. population continues to become increasingly diverse, yet extreme gerrymandering renders what should be the most democratically responsive branch of government resistant to these changes, insulating state legislators from the evolving demographics and political preferences of their constituents,” said Stuart Naifeh, Manager of LDF’s Redistricting Project. “The ability of voters to control anti-democratic action through their state constitutions and to have those constitutions enforced through state judicial review is vital to protect against discriminatory power grabs.”

Moore v. Harper arises out of North Carolina’s congressional redistricting after the 2020 Census. The Republican-controlled legislature adopted a map that would allow Republican voters to control elections in 10 of 14 congressional districts, even though the state is nearly evenly divided along partisan lines. According to the plaintiffs in the case, the map was “the product of intentional racial discrimination undertaken for the purpose of racial vote dilution and to further the legislature’s partisan gerrymandering goals.”

The state Supreme Court blocked this partisan gerrymander as inconsistent with the North Carolina constitution, and ordered a new map to be drawn by court-appointed experts. Under

normal circumstances, the U.S. Supreme Court would have no jurisdiction to consider that ruling because the state Supreme Court is the final arbiter of the proper interpretation of the state's constitution. However, the U.S. Supreme Court agreed to hear the case based on the petitioners putting forth the independent state legislature theory.

LDF's amicus brief describes the grave risk that the Supreme Court faces of upending the carefully constructed system of checks on governmental and majoritarian abuses of power and overthrowing the basic premises of constitutional government that would result by adopting the so-called "independent state legislature" theory. Through careful analysis of the Constitution's Elections Clause and the original intent of this country's Founders, the brief argues that the theory defies the foundational principles of our constitutional democracy, invites unlawful race-based partisan gerrymandering, and must be forcefully rejected.

Download the full amicus brief [here](#).

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