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March 20, 2023

Clerk of the Court
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543

Re: *Moore v. Harper*, No. 21-1271

To the Clerk of the Court:

We represent Respondents the North Carolina League of Conservation Voters, Inc., et al. (“NCLCV Respondents”). We respectfully submit this supplemental letter brief addressing the question the Court posed on March 2, 2023: “What is the effect on this Court’s jurisdiction under 28 U.S.C. § 1257(a) and *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), of the North Carolina Supreme Court’s February 3, 2023 order granting rehearing, and any subsequent state court proceedings?”

NCLCV Respondents respectfully submit that the North Carolina Supreme Court’s February 3rd rehearing order itself has no material effect on this Court’s jurisdiction. For jurisdictional purposes the case’s procedural posture today is similar to its posture on May 20, 2022, when NCLCV Respondents opposed the petition for certiorari by arguing that this Court lacked jurisdiction, and on June 30, 2022, when this Court granted the petition over Respondents’ jurisdictional objections.

As further background, in our brief in opposition, we argued that this Court lacked jurisdiction over the question presented by Petitioners because there were ongoing state-court proceedings regarding the proper remedy for the state constitutional violations and therefore there was no “[f]inal judgment[]” to give rise to this Court’s jurisdiction under 28 U.S.C. § 1257(a). *See* NCLCV Opp. i, 3, 12, 17–20. We noted that the orders forming the basis for Petitioners’ question presented were quintessentially interlocutory—“classic nonfinal orders, particularly given that Petitioners [were] continuing to raise Elections Clause arguments in the ongoing state-court proceedings.” *Id.* at 17.

We likewise noted (*id.*) that while the North Carolina Supreme Court’s February 23, 2022 denial of Petitioners’ stay request had been a “final judgment for purposes of [this Court’s] jurisdiction,” that was because the stay denial had “finally determined” the congressional map for the 2022 election. *Nat’l Socialist Party of Am. v. Vill. of Skokie*, 432 U.S. 43, 44 (1977) (citing *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949)). However, our brief in opposition stated that there had been no final determination by the North Carolina Supreme Court as to the congressional map for 2024 and beyond (*see* NCLCV Opp. 17), which remains at issue in the ongoing proceedings.

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Our brief in opposition also argued that there was no exception to the final-judgment rule here under *Cox Broadcasting*. We stated that the “only exception that is even arguably relevant is the second *Cox* category—for cases where ‘the federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings.’” NCLCV Opp. 17–18 (quoting *Cox*, 420 U.S. at 480). And we argued that this exception did not apply for multiple reasons. *See id.* at 18–20.

Despite Respondents’ arguments that this Court lacked jurisdiction under 28 U.S.C. § 1257(a), the Court granted certiorari, 142 S. Ct. 2901 (2022), and did not direct the parties to address any jurisdictional question in their merits briefing. “In granting certiorari, [the Court] necessarily considered and rejected [Respondents’ arguments] as a basis for denying review.” *United States v. Williams*, 504 U.S. 36, 40 (1992) (describing respondents’ nonjurisdictional forfeiture argument).

Nevertheless, in our merits brief filed on behalf of all Non-State Respondents, we preserved our prior jurisdictional arguments and also made a narrower jurisdictional argument. *See* Br. for Non-State Respondents 5, 18, 69–70 & n.22, 80. Specifically, we noted that “Respondents argued at the certiorari stage that this Court lacks jurisdiction entirely.” *Id.* at 70 n.22 (citing, *e.g.*, Harper Opp. 11–15; NCLCV Opp. 17–20). We further argued that “Petitioners’ remedial-phase claims [were] outside this Court’s jurisdiction” because at that point “[o]nly the trial court ha[d] reached a final judgment on [those] claims” and “Petitioners’ remedial appeal remain[ed] pending in the state supreme court.” *Id.* at 69–70; *see also* U.S. Amicus Br. 28–29.

The North Carolina Supreme Court’s February 3rd order did not vacate, withdraw, supersede, or modify the court’s 2022 decisions on either liability or remedy. Indeed, Petitioners told the court that the time to rehear its liability rulings had long passed. *See* N.C. R. App. P. 31(a); Defs.’ Resp. to Mot. to Dismiss 1 (N.C. Feb. 3, 2023). And the February 3rd order did not specify any federal issue that the court had “overlooked or misapprehended.” N.C. R. App. P. 31(a). So the February 3rd rehearing order itself has no material effect on this Court’s jurisdiction.

As to the effect on this Court’s jurisdiction of “any subsequent state court proceedings,” NCLCV Respondents cannot answer that question at this time, as we do not yet know what the nature of those proceedings might be, nor when a final judgment may issue from the North Carolina Supreme Court on rehearing. However, we would be pleased to promptly submit a supplemental brief addressing any questions this Court might have once the North Carolina Supreme Court rules on the pending rehearing.

Sincerely,



Jessica Ring Amunson