



May 11, 2023

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

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

Dear Mr. Harris:

On April 28, 2023, the North Carolina Supreme Court issued a decision overruling its prior opinion in *Harper v. Hall (Harper I)*, 868 S.E.2d 499 (N.C. 2022), and withdrawing its opinion in *Harper v. Hall (Harper II)*, 881 S.E.2d 156 (N.C. 2022). *Harper v. Hall (Harper III)*, 2023 WL 3137057 (N.C. Apr. 28, 2023). The Court repeatedly emphasized that it was “affirm[ing] the three-judge panel’s 11 January 2022 Judgment,” which had dismissed Private Respondents’ claims with prejudice. *Harper III*, 2023 WL 3137057, at *3, *53. This most recent *Harper* decision confirms that this Court lacks jurisdiction and should dismiss this case.

First, as *Harper III* makes clear, the decisions on review here do not constitute final judgments. To substantiate this Court’s jurisdiction, Petitioners have previously pointed to (1) the state supreme court’s invalidation of the North Carolina General Assembly’s original congressional redistricting map and (2) the state supreme court’s refusal to stay the remedial congressional redistricting map. Pet. 5; Pet’rs’ Suppl. Letter Br. 1. But *Harper III* erased these interlocutory orders when it reverted to the state trial court’s January 11, 2022 judgment dismissing the Private Respondents’ partisan-gerrymandering claims as nonjusticiable political questions. Thus, although this case has *now* reached a final judgment, no final judgment existed before.

Second, for similar reasons, this case is moot. It is well established that when “an event occurs while a case is pending on appeal that makes it impossible for the court to grant any effectual relief whatever to a prevailing party, the appeal must be dismissed.” *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (internal quotation marks omitted). Here, this Court can no longer grant Petitioners

any meaningful relief because the state supreme court has already given them everything they wanted: Private Respondents' claims are dismissed with prejudice, and Petitioners are free to draw a new congressional map without constraints. Given this reality, the question that this case previously presented—whether the Elections Clause permits state courts to review redistricting maps for compliance with the state constitution—has become purely theoretical. This Court “has no authority ‘to give opinions upon moot questions or abstract propositions.’” *Id.* (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)).

For all these reasons, this Court should dismiss the case for lack of jurisdiction.

Respectfully,

/s/ Sarah G. Boyce
Sarah G. Boyce

Counsel for State Respondents

cc: See attached service list

IN THE SUPREME COURT OF THE UNITED STATES

No. 21-1271

TIMOTHY K. MOORE, ET AL.,
Petitioners,

v.

REBECCA HARPER, ET AL.,
Respondents.

*ON WRIT OF CERTIORARI TO THE
NORTH CAROLINA SUPREME COURT*

PROOF OF SERVICE

I, Sarah G. Boyce, a member of the bar of this Court, hereby certify that, on this 11th day of May 2023, all parties required by the Rules of this Court to be served, set out in the below service list, have been served by email and by first-class mail, postage prepaid. In addition, three paper copies have been mailed via overnight mail to the Clerk of this Court.

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