

HOW WILL UPCOMING SUPREME COURT ACTION IMPACT LOCAL ELECTIONS ADMINISTRATION?

NATIONAL
ASSOCIATION
of COUNTIES

NACo®

NLC

NATIONAL
LEAGUE
OF CITIES

CITIES STRONG TOGETHER

Thursday, October 27 | 3:00 PM ET

AGENDA

Welcome and Opening Remarks	Hon. Ricky Hatch Auditor/Clerk, Weber County, Utah Hon. Seth Bluestein City Commissioner, Philadelphia, Pennsylvania
Moore v. Harper Overview	James Romoser Editor, <i>SCOTUSblog</i>
Local Government Legal Advocacy	Rachel Mackey Legislative Director, Human Services and Education, NACo
Audience Q&A <ul style="list-style-type: none">• <i>Use Zoom “Q&A” function to type questions or raise hand to be unmuted</i>	James Romoser Editor, <i>SCOTUSblog</i>
Closing Remarks	Hon. Seth Bluestein City Commissioner, Philadelphia, Pennsylvania

WELCOME AND OPENING REMARKS



Hon. Ricky Hatch
Clerk/Auditor, Weber
County, Utah



Hon. Seth Bluestein
City Commissioner,
Philadelphia, Pennsylvania

MOORE V. HARPER OVERVIEW



Mr. James Romoser
Editor, *SCOTUSblog*



Moore v. Harper & The Independent State Legislature Theory: What Local Officials Need to Know

Oct. 27, 2022

James Romoser, Editor of SCOTUSblog

Agenda

- “Independent State Legislature” theory defined
- Background on *Moore v. Harper*
- Arguments at the Supreme Court
- Implications for local officials

The Elections Clause

“The Times, Places and **Manner** of holding Elections for Senators and Representatives, **shall be prescribed** in each State **by the Legislature** thereof; but the Congress may at any time by Law make or alter such Regulations...”

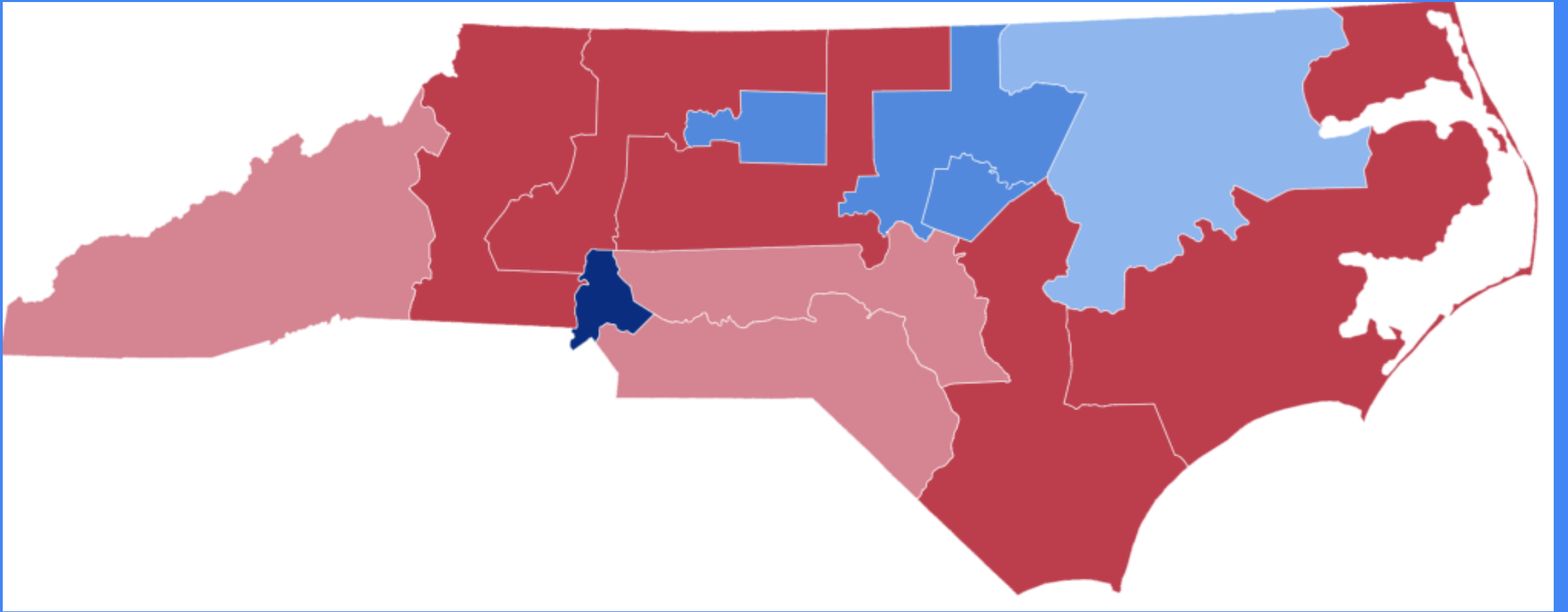
U.S. Constitution, Article I, Section 4, clause 1

Independent State Legislature Theory

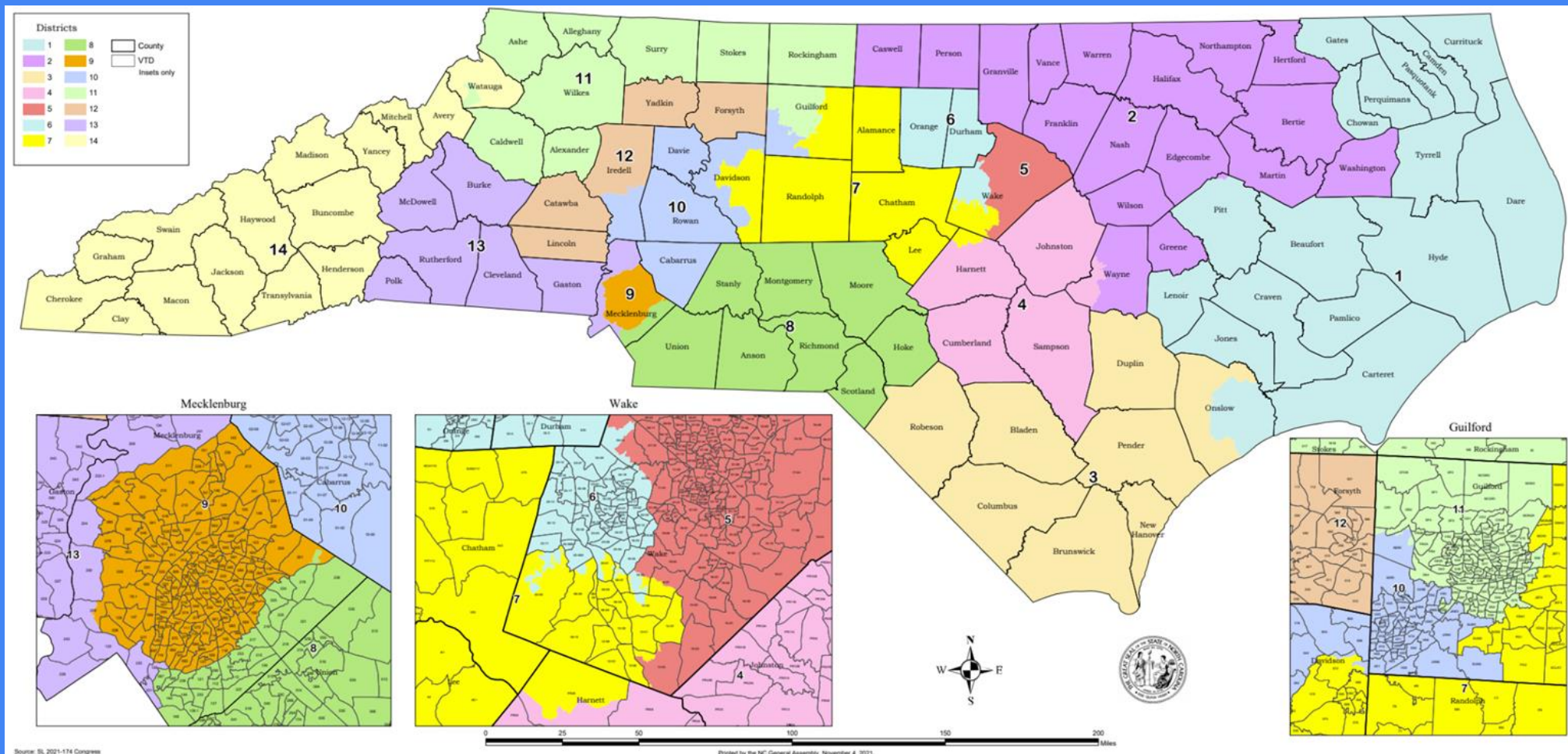
State legislatures have total (or near-total) authority to set the rules for congressional elections, without supervision from state courts or interference from any other state entities.

Moore v. Harper





2020 congressional map:
8 Republicans, 5 Democrats



Legislature's proposed map:
11 GOP, 3 Democrats (expected)

North Carolina Supreme Court 4-3 Ruling (Feb. 14, 2022)

The General Assembly enacted a congressional map “that **subordinated** traditional neutral redistricting criteria in favor of **extreme partisan advantage** by **diluting the power of certain people’s votes.**”

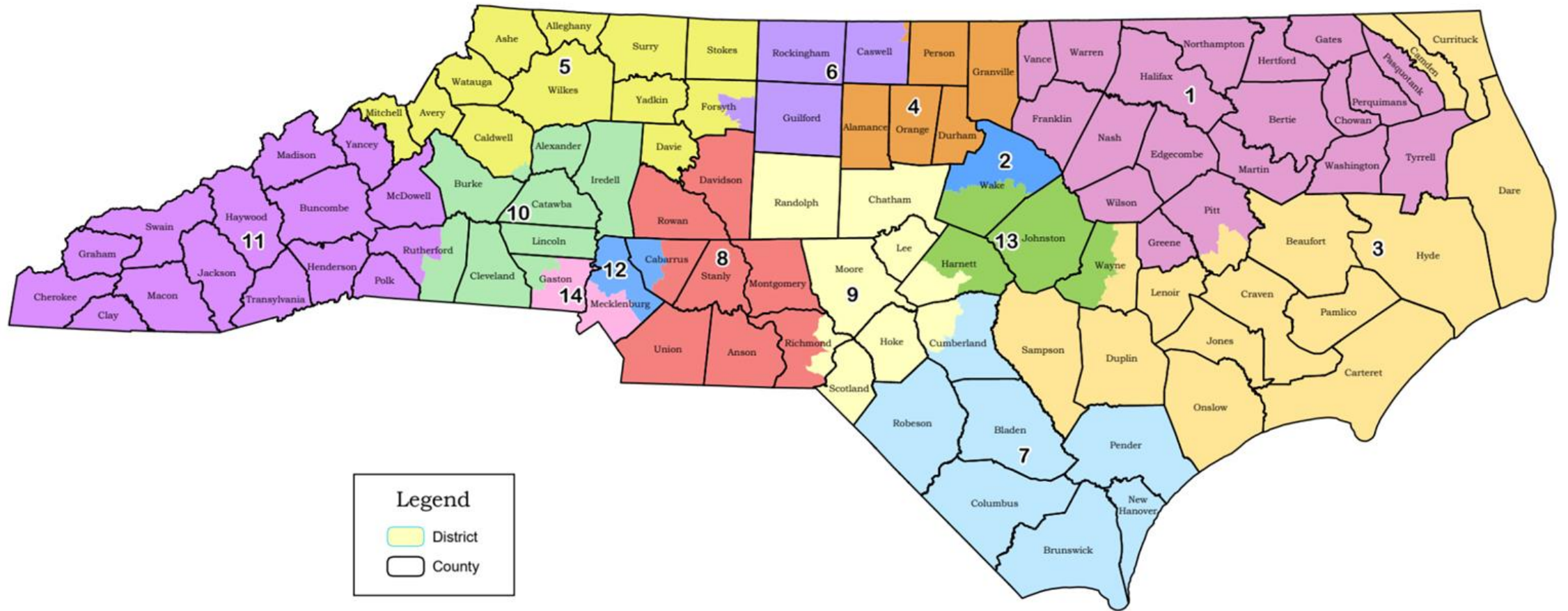
North Carolina Supreme Court 4-3 Ruling (Feb. 14, 2022)

The General Assembly's power over redistricting is "**subject to limitations** imposed by other [state] constitutional provisions."

North Carolina Constitution

“All elections shall be free.”

N.C. Constitution, Article I, Section 10



Court-approved map:
8 GOP, 6 Democrats (forecasted)

U.S. Supreme Court shadow docket ruling (March 7, 2022)

SUPREME COURT OF THE UNITED STATES

No. 21A455

**TIMOTHY MOORE, IN HIS OFFICIAL CAPACITY AS
SPEAKER OF THE NORTH CAROLINA
HOUSE OF REPRESENTATIVES, ET AL.
v. REBECCA HARPER, ET AL.**

ON APPLICATION FOR STAY

[March 7, 2022]

The application for stay pending the filing and disposition of a petition for a writ of certiorari presented to THE CHIEF JUSTICE and by him referred to the Court is denied.

JUSTICE ALITO, with whom JUSTICE THOMAS and JUSTICE GORSUCH join, dissenting from the denial of application for stay.

I would grant the application for a stay.

This case presents an exceptionally important and recurring question of constitutional law, namely, the extent of a state court's authority to reject rules adopted by a state legislature for use in conducting federal elections. There can be no doubt that this question is of great national importance. But we have not yet found an opportune occasion to address the issue. See, *e.g.*, *Democratic National Committee v. Wisconsin State Legislature*, 592 U. S. ____ (2020); *Scarnati v. Boockvar*, 592 U. S. ____ (2020); *Moore v. Circosta*, 592 U. S. ____ (2020); *Wise v. Circosta*, 592 U. S. ____ (2020); *Bush v. Gore*, 531 U. S. 98, 112 (2000) (Rehnquist, C. J., concurring); see also *Republican Party of Pennsylvania v. Degraffenreid*, 592 U. S. ____ (2021) (THOMAS, J., dissenting from denial of certiorari); *id.*, at ____ (ALITO, J., dissenting from denial of certiorari); *Wisconsin State Legislature*, 592 U. S., at ____ (GORSUCH, J., concurring). We will have to resolve this question sooner or later, and the sooner we do so, the better. This case presented a good opportunity to consider the issue, but unfortunately the Court has again found the occasion inopportune.

JUSTICE KAVANAUGH, concurring in denial of application for stay.

I agree with JUSTICE ALITO that the underlying Elections Clause question raised in the emergency application is important, and that both sides have advanced serious arguments on the merits. The issue is almost certain to keep arising until the Court definitively resolves it. Therefore, if the Court receives petitions for certiorari raising the issue, I believe that the Court should grant certiorari in an appropriate case—either in this case from North Carolina or in a similar case from another State. If the Court does so, the Court can carefully consider and decide the issue next Term after full briefing and oral argument.

In their emergency application, however, the applicants are asking this Court for extraordinary interim relief—namely, an order from this Court requiring North Carolina to change its existing congressional election districts for the upcoming 2022 primary and general elections. But this Court has repeatedly ruled that federal courts ordinarily should not alter state election laws in the period close to an

Moore v. Harper – on the merits

- On June 30, 2022, SCOTUS agreed to receive full briefing and formally hear the case.
- Oral argument is on Dec. 7, 2022.
- Expect a ruling in the spring or summer of 2023.

Arguments in favor of ISL theory

- The text of the Constitution speaks for itself.
“Legislature” means “legislature.”
- Historical evidence about state constitutions in the early days of the republic.
- No matter what, the North Carolina Supreme Court went way too far in this case.

Arguments against ISL theory

- When U.S. Constitution was ratified, the word “legislature” was understood to mean a state legislative body *as constrained by the state constitution*.
- Historical evidence about state practices.
- Adopting ISL theory would cause chaos in local election administration.

Implications if SCOTUS adopts ISL theory

- Enhance power of state legislatures.
- Nearly impossible to contest partisan gerrymandering.
- Foster uncertainty about authority of local officials to run elections on the ground.
- Threaten local control of elections.
- May further undermine voters' trust in elections.
- Apply to presidential elections?

The Presidential Electors Clause

“Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress...”

U.S. Constitution, Article II, Section 1, clause 2

LOCAL GOVERNMENT LEGAL ADVOCACY



Ms. Rachel Mackey

Legislative Director, Human
Services & Education, NACo

AMICUS BRIEF SIGNATORIES

[Click here to view Amicus Brief](#)

National
Association of
Counties (NACo)

National League of
Cities (NLC)

International
Municipal Lawyers
Association (IMLA)

U.S. Conference of
Mayors (USCM)

International
City/County
Management
Association (ICMA)

AMICUS BRIEF CONTENT

Role of local governments in administering elections

Administering
elections and
related laws

Certifying results

Certifying and
maintaining
voting systems

Conducting
outreach and
education

Voter
registration,
absentee voting

Legal matters



Practical implications of Independent State Legislature Theory:

Impractical, two-tier system

Burden local officials, create
confusion and increase human
error

Complicate efforts to respond to
emergencies



Threats to local control of elections and constitutional right to
vote

AUDIENCE Q&A

Use the Zoom “Q&A”
function to type questions
or raise your hand to be
unmuted

**FOLLOW UP
QUESTIONS?**

Rachel Mackey
rmackey@naco.org

Stephanie Martinez-
Ruckman
[Martinez-
Ruckman@nlc.org](mailto:Martinez-Ruckman@nlc.org)