No. 24-1095

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RODNEY D. PIERCE and MOSES MATTHEWS,

Plaintiffs-Appellants,

v.

THE NORTH CAROLINA STATE BOARD OF ELECTIONS, et al.,

Defendants-Appellees.

On Appeal from the United States District Court for
the Eastern District of North Carolina
The Honorable James C. Dever III (No. 4:23-cv-193-D-RN)

OPPOSITION TO PETITION FOR REHEARING EN BANC FOR LEGISLATIVE DEFENDANTS-APPELLEES

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
Cassie A. Holt
Alexandra M. Bradley
NELSON MULLINS RILEY & SCARBOROUGH LLP
301 Hillsborough Street
Raleigh, North Carolina 27603
(919) 329-3800
phil.strach@nelsonmullins.com

Richard B. Raile
Katherine L. McKnight
Trevor M. Stanley
Benjamin D. Janacek
BAKER & HOSTETLER LLP
1050 Connecticut Ave. N.W.
Washington, DC 20036
(202) 861-1711
rraile@bakerlaw.com

Patrick T. Lewis
BAKER & HOSTETLER LLP
Key Tower
127 Public Square
Cleveland, Ohio 44114
(216) 861-7096
plewis@bakerlaw.com

(additional counsel listed on inside cover)

Rachel Palmer Hooper
Tyler G. Doyle
BAKER & HOSTETLER LLP
811 Main Street
Houston, TX 77002
(713) 646-1329
rhooper@bakerlaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

STATEMENT

In October 2023, the North Carolina General Assembly enacted a senate redistricting plan in the wake of 20 years of near-constant redistricting litigation. *See* Op. 6-10. Twice within the past 10 years, the Supreme Court affirmed that, due to high levels of white crossover voting in northeastern North Carolina, polarization did not exist at "legally significant" levels. *Covington v. North Carolina*, 316 F.R.D. 117, 170 (M.D.N.C. 2016), *aff'd*, 581 U.S. 1015 (2017); *Cooper v. Harris*, 581 U.S. 285, 304-06 (2017). Under those circumstances, "majority-minority districts [are] not required" under Section 2 of the Voting Rights Act (VRA), and creating them for predominantly racial reasons violates the Fourteenth Amendment. *Cooper*, 581 U.S. at 306 (citation omitted). Accordingly, the General Assembly "did not use racial data when drawing the [2023] Senate map." Op. 11 (quotation marks omitted).

In this Section 2 case, Plaintiffs demand a majority-minority state senate district that precedent deemed unconstitutional. "This is not the only case challenging the [North Carolina] maps adopted in 2023," Op. 11 n.3, but it has had the most convoluted history. While other plaintiffs did not seek injunctions for the 2024 elections, these Plaintiffs not only sought a preliminary injunction but waited 26 days from the 2023 plan's ratification and then demanded that an injunction be issued almost instantaneously over Thanksgiving weekend. The district court declined to play Plaintiffs' "game of ambush," D.Ct.Doc.23 at 3 (citation omitted), but set expedited deadlines and scheduled a hearing on their

motion. Plaintiffs appealed *before* the district court could hear their motion; this Court dismissed that appeal. Op. 13-14.

In their haste, Plaintiffs neglected to build a sound evidentiary record on remand. "[A]t best, Plaintiffs didn't understand their own data," Opp. 28, and, after their expert changed methods upon the district court's questioning, their case fell apart. The district court discredited Plaintiffs' only expert on racial voting patterns, found that vote dilution was not shown under the totality of the circumstances, and concluded that federal-court-intervention in the 2024 elections—which were already being administered when this suit was filed—would contravene the *Purcell* doctrine, which forbids election-related injunctions on the eve of elections. Section 2 resists "single-minded" doctrines and "demand[s] that courts employ a…refined approach." *Allen v. Milligan*, 599 U.S. 1, 26 (2023). The district court did that, and this Court correctly affirmed. The majority and dissenting opinions both agreed that the ruling found the question of expert credibility "dispositive." Op. 70 (dissent). The *Purcell* doctrine was equally and independently dispositive.

This case does not warrant rehearing en banc, which should be reserved for "the rarest of circumstances." *Air Line Pilots Ass'n Int'l v. E. Air Lines, Inc.*, 863 F.2d 891, 925 (D.C. Cir. 1988) (R.B. Ginsburg, J., concurring in the denial of rehearing en banc). Plaintiffs' petition does not present contentions sufficient to alter the panel's judgment, it admits that relief is no longer available for the 2024 elections, and it does not explain how a case turning on expert credibility is exceptionally important. Plaintiffs' efforts to recast a fact-bound decision as

issuing broad legal rulings fall flat. As the majority recognized, Plaintiffs' "arguments on appeal are better directed to the district court on remand," where Plaintiffs may seek to prove their claims "after the parties develop the facts in discovery." Op. 27. Only with credible evidence will they be entitled to relief. Rehearing cannot get them that.

REASONS FOR DENYING THE PETITION

I. Rehearing En Banc Would Not Change the Outcome of This Appeal

The petition raises no question of "exceptional importance." Fed. R. App. P. 35(a)(2). "[T]he only issue presently before" this Court is "the correctness of the decision to [deny] a preliminary injunction." *Univ. of Texas v. Camenisch*, 451 U.S. 390, 394 (1981). The "purpose" of a preliminary injunction is "limited"; it is "merely to preserve the relative positions of the parties until a trial on the merits can be held." *Id.*

In any preliminary-injunction case, "the district court will be positioned to further consider and decide" the issues "by final judgment," so it is unlikely to be "the rare case in which it is incumbent upon the full court to 'sit in judgment on the panel.'" *Air Line Pilots*, 863 F.2d at 925 (D.C. Cir. 1988) (R.B. Ginsburg, J., concurring in the denial of rehearing en banc) (citation omitted). The petition presents an especially defective vehicle because it does not raise sufficient contentions that would, if accepted, "change the outcome." *See Al-Bihani v. Obama*, 619 F.3d 1, 57 (D.C. Cir. 2010) (Sentelle, C.J., concurring in the denial of rehearing en banc) (citation and alteration marks omitted).

A. A plaintiff seeking a preliminary injunction "must" establish "that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Plaintiffs' motion failed below under both elements, and the panel found "no abuse of discretion." Op. 47.

First, the panel found that the *Purcell* principle "independently" forbade a preliminary injunction, given existing election exigencies. Op. 52; *see* Op. 49-54. Second, the panel found that ordering "districts [to] hit[] a racial quota" would "create the real risk of imposing racially gerrymandered districts" on a provisional basis, which "is obviously not in the public interest." Op. 48. Third, it found Plaintiffs acted inequitably by failing to "present their views" about the senate plan "while the bill was under consideration" and waiting "26 days after the General Assembly enacted [it] to file suit and 28 days to seek a preliminary injunction." Op. 48. Additionally, the panel found that Plaintiffs' demand for relief that "obviously" would change the status quo triggers "a high bar for relief" governing all the requisite elements of proof. Op. 17. These are settled grounds for denying a preliminary injunction. *See Wise v. Circosta*, 978 F.3d 93, 98-99 (4th Cir. 2020) (en banc) (*Purcell* principle); *Perry v. Judd*, 471 F. App'x 219, 224 (4th Cir. 2012) (delay in seeking injunction); *Leaders of a Beautiful Struggle v. Baltimore Police Dep't*, 2 F.4th 330, 346 (4th Cir. 2021) (public interest "favors protecting constitutional rights"); *Taylor v. Freeman*, 34 F.3d 266, 270 n.2 (4th Cir. 1994) (injunction altering status quo is "in any circumstance disfavored").

The petition challenges none of these rulings and cannot deliver a different outcome. There is no point in en banc rehearing for some of the panel's findings independent of its judgment. *Cf. B.P.J. by Jackson v. W. Virginia State Bd. of Educ.*, 98 F.4th 542, 553 (4th Cir. 2024) ("appellate courts review judgments, not statements in opinions" (citation omitted)).

B. Plaintiffs concede their en banc petition does not, and cannot, challenge the decision to deny a preliminary injunction. Specifically, they admit that "relief is no longer available for 2024." Pet. 1. An en banc proceeding would have no practical effect.

Plaintiffs look ahead to "the *2026* elections," Pet. 2, but questions relevant to those elections are not properly before this Court. Even if Plaintiffs were to show a likelihood of success on the merits (they have not), they still "must demonstrate a likelihood of irreparable injury—not just a possibility—in order to obtain preliminary relief." *Winter*, 555 U.S. at 21. But, in the district court, Plaintiffs did not argue that the 2026 elections are likely to occur before judgment; their arguments were directed to the 2024 elections. Nor did Plaintiffs press contentions about the 2026 elections to the panel. *See* Opening Brief for Plaintiffs-Appellants 54-62; Reply Brief for Plaintiffs-Appellants 29-33. Moreover, this Court does not weigh equitable factors itself; it reviews trial-court equitable findings. *See Quince Orchard Valley Citizens Ass'n, Inc. v. Hodel*, 872 F.2d 75, 78 (4th Cir. 1989).

Even were it to weigh those factors, the Court would be compelled to deny relief. Plaintiffs cannot show a likelihood of irreparable harm "before a decision

on the merits can be rendered." *Winter*, 555 U.S. at 22 (citation omitted); *see also Camenisch*, 451 U.S. at 395 (measuring harm by when "a trial on the merits can be held"). The petition states that trial is likely by "February 2025" and a ruling is likely by "spring or summer 2025," Pet. 2, well before the 2026 elections. Irreparable harm before judgment is, at most, "just a possibility." *Winter*, 555 U.S. at 21.

C. Beyond that, the equities of this case present a paradigmatic fact-bound question properly adjudicated within the ordinary "tradition of three-judge courts," *W. Pac. R. Corp. v. W. Pac. R. Co.*, 345 U.S. 247, 256 (1953), not in an en banc proceeding. Recognizing this vehicle defect, Plaintiffs direct the Court to *Allen v. Milligan*, 599 U.S. 1 (2023), where the Supreme Court stayed a preliminary injunction and ruled on its merits only after the election for which it originally issued had passed. Pet. 2. Plaintiffs analogize their petition with *Milligan*, but this is doubly flawed.

First, *Milligan* does not speak to when a question merits extraordinary, discretionary review because *Milligan* was not before the Supreme Court on discretionary review. It was a direct appeal of right from a three-judge district court's injunction. *See* 28 U.S.C. §§ 1253 and 2284(a). The Supreme Court had to adjudicate the case unless it lacked jurisdiction and stood in the position of

the *panel* that decided this appeal of right, not in the position of this Court exercising extraordinary discretion.[1]

Second, the appellants in *Milligan* elected not to challenge the district court's injunction on equitable grounds. Instead, they made merits arguments about Section 2, *see* Brief for Appellants, *Merrill v. Milligan*, at 32-75 (filed April 25, 2022), and the Supreme Court addressed no equitable questions. *See Milligan,* 599 U.S. at 24-42. Here, by contrast, equitable challenges to an injunction have been consistently raised—and successfully.

The better comparison is with *Robinson v. Ardoin*, 86 F.4th 574 (5th Cir. 2023), which addressed equitable contentions in a similar setting. That court vacated a preliminary injunction entered before the 2022 elections—which was stayed during those elections—because "a trial can likely occur prior to harm occurring in the 2024 elections" and "a preliminary injunction is no longer needed to prevent an irreparable injury from occurring before said trial." *Id.* at 600. The Fifth Circuit denied a follow-on petition for rehearing en banc. Court Order, *Robinson v. Ardoin*, 22-30333, Dkt. 363 (entered Dec. 15, 2023). As in that case, the petition here could produce only a narrow ruling of limited import.

---

[1] To be precise, one of two actions consolidated in *Milligan* came to the Supreme Court on a direct appeal. *See Milligan*, 599 U.S. at 16-17 and n.2. Although the second arose via certiorari, that says nothing of applicability here. Bound to adjudicate the direct appeal, the Supreme Court could not have denied certiorari in the consolidated case, where the cases were resolved in one opinion on one record.

II. The Merits Determinations Comprise Fact-Bound Rulings Lacking Broader Importance

Even viewed myopically under only the first *Winter* factor, the petition fails to justify en banc proceedings. Narrow determinations of fact dictated the panel's ruling. "[T]he clearly-erroneous test of Rule 52(a) is the appropriate standard for appellate review of a finding of vote dilution" under Section 2. *Thornburg v. Gingles*, 478 U.S. 30, 79 (1986). The panel neither misapplied that standard nor issued any legal holding of broad importance.

A. Three of four supposed "errors" on which Plaintiffs seek rehearing concern the third *Gingles* precondition. Pet. 8; *see* Pet. 8-17. But Plaintiffs neglect to mention that the majority and dissenting opinions agreed that a question of expert credibility—which the petition ignores—was "dispositive" of this element. Op. 70 (dissent).

The opinions agreed on the legal standard: "the third *Gingles* precondition requires Appellants to show that the white majority votes sufficiently as a bloc such that it will usually defeat the minority-preferred candidate, absent a remedial district." Op. 57 (dissent); *see* Op. 21 (majority). Because voting patterns by race cannot be discerned from election results, Section 2 plaintiffs must present "statistical evidence." *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 986 F.2d 728, 744 (5th Cir. 1993), *on reh'g*, 999 F.2d 831 (5th Cir. 1993). Moreover, because no elections occurred in the challenged districts, Pet. 10-11, Plaintiffs faced the problem of proving this precondition based on projections and assumptions. Plaintiffs' evidence failed because the

district court discredited "the only expert Plaintiffs offered to opine on white bloc voting." Op. 21. The district court found the report of that expert, Dr. Barreto, "unreliable, incomplete, and contradicted by other evidence." Op. 22.

The majority and dissenting opinions agreed on how that ruling came about. Dr. Barreto's report contained a finding that was "not helpful to Appellants' case, and the district court asked about it at its January 10 hearing on the preliminary injunction." Op. 71 (dissent). Plaintiffs' counsel initially "stated that the" finding "was likely a typo," but Dr. Barreto "later said in a supplemental declaration that it wasn't." Op. 71 (dissent). Instead, Dr. Barreto blamed "a methodological flaw in his original analysis" and proposed for the first time after the hearing that "votes in uncontested elections" should be entered into the analysis to change that finding (in Plaintiffs' favor), but he "did not discuss what effect, if any, this methodological shift would have on his other electoral predictions." Op. 23 (majority). The district court "was deeply troubled by Barreto's changing methods and outcomes" and found that his "belated explanation undercuts all of his conclusions…." Op. 23 (majority) (quotation and alteration marks omitted). The panel deferred to the trial court's credibility findings, *see* Op. 23-34, but the dissenting opinion would have reopened them, Op. 70-73. Both opinions, however, agreed that "**the majority treats Barreto's alleged unreliability as dispositive**." Op. 70 (dissent) (emphasis added); *see* Op. 33 (majority).

The petition does not explain how an appeal that turns on a credibility determination could qualify for en banc review, especially where the petition

does not challenge that determination. Undeterred, Plaintiffs insist that the panel ruling "conflicts with decisions of the Supreme Court." Pet. 2. But the Supreme Court has never held that Dr. Barreto is a credible expert whose opinions invariably bind district courts. The decisions Plaintiffs cite hold that appellate courts applying clear-error review must "affirm the [trial] court's finding so long as it is 'plausible'" and that they "give singular deference to a trial court's judgments about the credibility of witnesses." *Cooper*, 581 U.S. at 309 (citation omitted); *see also Gingles*, 478 U.S. at 79; *Milligan*, 599 U.S. at 23; *see* Pet. 2-3 (seeking conflict in these decisions). The majority was faithful to that doctrine.

B. Plaintiffs fail to manufacture a legal question—let alone one of broad importance—from this credibility finding.

First, Plaintiffs are wrong to contend that the majority opinion contains an "endorsement of a so-called 'district effectiveness analysis.'" Pet. 11. To the contrary, the panel deemed "inaccurate" the district court's "implication" that an effectiveness analysis is essential to a Section 2 claim. Op. 33. Rehearing cannot be warranted to review a holding the panel did not issue. The majority and dissent parted company, not as to the necessity of an effectiveness analysis, but as to whether the district court's suggestion on that point mattered. The majority found this point harmless because it was unnecessary to the conclusion, *see* Op. 33, whereas the dissent deemed it more central, *see* Op. 66-70. The

majority was correct in its reading of the order below. But, in all events, the proper interpretation of an order raises no exceptionally important question.[2]

Second, the panel also did not issue an opinion about the "'usually defeats' standard," and certainly did not hold "that 30 of 31 elections is not 'usually.'" Pet. 9. Instead, the panel affirmed the trial court's decisions that Dr. Barreto's troubling change in analysis "undercuts all of his conclusions." Op. 23 (citation omitted). The record, properly understood, did not show that Black-preferred candidates lost in 30 of 31 projected elections; it showed *nothing* credible because Dr. Barreto "did not address whether his alternative analysis of uncontested elections…would change the results for other reconstituted" elections and "legitimately raised the question whether other changes might result from further examination of Barreto's methods and opinions…." Op. 28. The panel simply applied the rule that "[a] district court is not obligated to credit the opinions of an expert witness when it has serious doubts about the expert's methodology" or when "the expert's response to questioning raises more questions than it answers." Op. 28. Plaintiffs do not, and could not, challenge that rule.

Third, the panel also did not hold anything of note about "racially polarized voting." Pet. 16. The panel held that a finding of "statistically

[2] To the extent Plaintiffs challenge the panel's conclusion that an effectiveness analysis is "probative," but is "hardly an across-the-board requirement," Op. 32, they argue against the "refined approach" that precedent demands, *Milligan*, 599 U.S. at 26. Moreover, the panel's decision reserves the underlying question of when polarization becomes legally significant for future litigation.

significant" polarized voting is not "sufficient, by itself, to prove the third *Gingles* precondition." Op. 29. That holding compelled affirmance because, in the portion of his report relevant to this question, Dr. Barreto made only a "statistically significant finding of racially polarized voting." JA280; *see* Op. 29. The Supreme Court unanimously rejected Plaintiffs' view that this satisfies the third precondition, holding that the "generalized conclusion" of "'statistically significant' racially polarized voting" "fails to meaningfully (**or indeed, at all**) address the relevant local question" under the third precondition. *Cooper*, 581 U.S. at 304 n.5 (emphasis added); Op. 29-30.

This case presents no occasion to consider the outer bounds of this doctrine. Plaintiffs wrongly claim that "it is undisputed that racially polarized voting is extreme here." Pet. 17. The district court found high levels of white crossover voting in the region of North Carolina at issue, *see* JA939-40, where the Supreme Court has also recognized high levels of white crossover voting, *Cooper*, 581 U.S. at 304. Thus, it is hotly disputed that polarized voting is legally significant (let alone "extreme"), and Plaintiffs lost on that question. Moreover, the panel found "[s]ignificant quantitative and qualitative differences between the evidence in" the cases Plaintiffs cite and this case. Op. 31. Factual deficiencies again doom Plaintiffs' effort to manufacture a question of law.

C. Plaintiffs' fourth argument, directed to the totality-of-circumstances inquiries, Pet. 17-18, ignores that other panel determinations were "sufficient to deny relief," Opp. 34. They also ignore that the clear-error standard "extends to an appellate court's review of a district court's finding that different pieces of

evidence carry different probative values in the overall section 2 investigation." *Solomon v. Liberty Cnty. Comm'rs*, 221 F.3d 1218, 1227 (11th Cir. 2000). The appellate court's "function is not to reweigh the evidence presented to the district court." *United States v. Charleston Cnty., S.C.*, 365 F.3d 341, 349 (4th Cir. 2004). The panel correctly applied these tests in declining to revisit thorough fact-finding where Plaintiffs "simply disagree with the weight the district court accorded their evidence—a textbook factual dispute." Op. 38.

In response, Plaintiffs propose that the totality-of-circumstances test means next to nothing and that it should be deemed satisfied in all but the "unusual case." Pet. 18. But the Supreme Court has expressly disagreed, explaining that a proper application of Section 2 will render suits "rarely…successful" and "limit judicial intervention to 'those instances of intensive racial politics'" that involve "'excessive role of race in the electoral process.'" *Milligan*, 599 U.S. at 30 (alteration marks and citation omitted). It has also clarified that the totality-of-circumstances factors are a plaintiff's to "prove," not a defendant's to disprove. *Abbott v. Perez*, 585 U.S. 579, 614 (2018); *see also Johnson v. De Grandy*, 512 U.S. 997, 1011 (1994). And, as Justice Kavanaugh recently explained, "race-based redistricting remedies under § 2…cannot extend indefinitely into the future." *Milligan*, 599 U.S. at 45 (Kavanaugh, J., concurring). Unless courts engage in the "intensely local appraisal" of "political reality" that precedent demands, Op. 35 (citation omitted), they will render Section 2 unconstitutional by forcing race-based remedies unjustified by present realities.

From that flawed foundation, Plaintiffs erroneously reframe their failings of proof as legal "obstacles" imposed by the panel. Pet. 18 (citation omitted). Not so. The trial court engaged in "a flexible, fact-intensive" review of the evidence that Plaintiffs hastily cobbled together, looking to "the light of past and present reality, political and otherwise." *Gingles*, 478 U.S. at 46, 78 (citation omitted). The findings here are confined to the record and the posture in which it was evaluated. Plaintiffs wrongly advocate a rigid legal rule that any Section 2 challenger announcing an "egregious" violation, Pet. 1, should obtain relief, in spite of stark evidentiary failings. *Gingles* condemned that type of inflexible rule nearly 40 years ago. *See* 478 U.S. at 78-79. It merits no revisiting today.

D. Failing to show that rehearing would secure broader "uniformity of the court's decisions," Fed. R. App. P. 35(a)(1), Plaintiffs point to *this* case and say the panel opinion "invites the district court to reject Plaintiffs' Section 2 claim" after trial, Pet. 2. Even if importance could be established solely by reference to one case, Plaintiffs ignore that "the findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits." *Camenisch*, 451 U.S. at 395. And they ignore the panel's express recognition that "[t]he denial of preliminary relief is just that: preliminary." Op. 55. The panel explained that "[i]t may be that with discovery and further factual development, Plaintiffs can prove that these two Senate districts violate Section 2 of the VRA and they are entitled to a majority-minority district in northeastern North Carolina." Op. 55. Plaintiffs' en banc arguments are

therefore "better directed to the district court on remand after the parties develop the facts in discovery." Op. 27.

The petition confirms the wisdom of this approach. It notes the challenges in proof where no elections have occurred "in the *actual districts at issue*." Pet. 10. In acknowledging that elections will in all events occur in the challenged districts in 2024, the petition admits information probative to their theory of the case is forthcoming. Rehearing en banc would make no sense where better information will arrive before judgment. *See Levy v. Lexington Cnty., S.C.*, 589 F.3d 708, 715 (4th Cir. 2009) (remanding Section 2 case so that new election results could be considered). And, if legal issues become distilled at later stages, this Court may review them after final judgment.[3]

CONCLUSION

The petition should be denied.

---

[3] If this Court were to conclude, counterfactually, that legal questions warrant rehearing en banc in the present posture, this would indicate that Supreme Court review of the same issues is equally warranted. *See, e.g.*, *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179 (2022), *reversing N.C. State Conf. of the NAACP v. Berger*, 999 F.3d 915 (4th Cir. 2021) (en banc); *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321 (2021), *reversing Democratic Nat'l Comm. v. Hobbs*, 948 F.3d 989 (9th Cir. 2020) (en banc); *Lackey v. Stinnie*, __S. Ct.__, 2024 WL 1706013 (U.S. Apr. 22, 2024), *granting certiorari from Stinnie v. Holcomb*, 77 F.4th 200 (4th Cir. 2023) (en banc).

May 13, 2024

Respectfully submitted,

/s/ Richard B. Raile

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
Cassie A. Holt
Alexandra M. Bradley
NELSON MULLINS RILEY & SCARBOROUGH LLP
301 Hillsborough Street
Raleigh, North Carolina 27603
(919) 329-3800
phil.strach@nelsonmullins.com

Richard B. Raile
Katherine L. McKnight
Trevor M. Stanley
Benjamin D. Janacek
BAKER & HOSTETLER LLP
1050 Connecticut Ave. N.W.,
Washington, DC 20036
(202) 861-1711
rraile@bakerlaw.com

Patrick T. Lewis
BAKER & HOSTETLER LLP
Key Tower
127 Public Square
Cleveland, Ohio 44114
(216) 861-7096
plewis@bakerlaw.com

Rachel Palmer Hooper
Tyler G. Doyle
BAKER & HOSTETLER LLP
811 Main Street
Houston, TX 77002
(713) 646-1329
rhooper@bakerlaw.com

Counsel for Legislative Defendants-Appellees

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 35(b)(2) because it contains 3,865 words, excluding the parts of the brief exempted by FRAP 32(f).

2. This brief complies with the typeface and type-style requirements of FRAP 32(a)(5) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Calisto MT font.

May 13, 2024

/s/ Richard B. Raile

Richard B. Raile
BAKER & HOSTETLER LLP
1050 Connecticut Ave. N.W.
Washington, DC 20036
(202) 861-1711
rraile@bakerlaw.com

Counsel for Legislative Defendants-Appellees

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2024, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

May 13, 2024

/s/ Richard B. Raile

Richard B. Raile
BAKER & HOSTETLER LLP
1050 Connecticut Ave. N.W.
Washington, DC 20036
(202) 861-1711
rraile@bakerlaw.com

Counsel for Legislative Defendants-Appellees