

League of Women Voters Files Amicus Brief in *Moore v. Harper*

Leagues Representing 50 states and DC Join Brief Focused on Negative Implications of Independent State Legislature Theory

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WASHINGTON — Today, the League of Women Voters of the United States and League chapters from all 50 states and the District of Columbia filed an amicus brief in the *Moore v. Harper* case before the Supreme Court. The case concerns the so-called “independent state legislature theory” (ISLT), which, if adopted, would have far-reaching implications for the future of American democracy. The League is represented by Fair Elections Center and O’Melveny & Myers LLP.

"Giving states unchecked power to set rules for federal elections is an assault on the American voter," said **Virginia Kase Solomón**, CEO of the League of Women Voters of the US. "Historically, state legislatures have enacted the most harmful and suppressive anti-voter laws, and pro-voter groups like the League have relied on the ability to fight them in state courts. The Independent State Legislature Theory is a dangerous, fringe ideology that leaves voters effectively defenseless from harmful election laws."

The League of Women Voters has serious concerns about this case because a ruling adopting ISLT would give state legislatures nearly unrestricted authority to set the rules for federal elections, prioritizing the ambitions of politicians over the American voter. Furthermore, if the Supreme Court condones this theory, it will undermine the role of state courts to protect voters when politicians create unconstitutional barriers to voting, draw unlawful voting maps, and invalidate direct democracy efforts like ballot initiatives.

"In creating the US Constitution, the framers were intentional about establishing a checks and balances system to disrupt any one branch of government from becoming too powerful," said **Celina Stewart**, chief counsel and senior director of advocacy and litigation at the League of Women Voters of the US. "Because state courts have been vested in the salient role of deciding disputes that govern our daily lives, any unraveling of this longstanding balancing would be a dangerous and historic blow to

democracy as we know it. We implore the Court to rule in favor of voters and reject the Independent State Legislature Theory."

As this case has massive implications for every state, the League of Women Voters amicus brief expresses the concerns of Leagues representing all 50 states and the District of Columbia. The League's brief focuses on the practical, negative impacts that ISLT will have across the country. Specifically, the brief explores how implementing such a theory would create different election rules for state, local, and federal elections that would cause confusion for administrators and voters alike and would have a deleterious effect in maintaining free and fair elections.

"The theory advanced in *Moore* calls for a legal revolution that would chop up and alternate rules by type of election, ushering in chaos and confusion for poll workers and voters," said **Jon Sherman**, litigation director and senior counsel for Fair Elections Center. "In this dangerous moment for our democracy, the Supreme Court must be a steady hand."

"Our team is privileged to have had the opportunity to collaborate with the League of Women Voters and the Fair Elections Center in showing how ISLT would shatter election norms and processes that are central to the functioning of our democracy," said **Meaghan VerGow**, partner at O'Melveny & Myers LLP.

Quotes from state (and DC) League representatives:

Alabama

"A federal three-judge panel recently held that the Alabama legislature violated the *Voting Rights Act*, harming Black voters in the state when it drew the state congressional map. We also rely on state courts to protect against violations of the rights of Alabamians by the state legislature. Removing that check on their power would be unacceptable."

Kathy Jones, president, LWV of Alabama

Arizona

"Partisan gerrymandering has been used by both political parties to increase their power, stifle the voices of their opposition, and pass partisan legislation.

The people of Arizona perceived this as an abuse of power and responded in 2000 by modifying our state Constitution to transfer responsibility for redrawing voting districts from state legislators to an independent redistricting commission. We now see that voter-supported commission threatened by *Moore v. Harper*. Separation of powers exists for a reason — to prevent abuses by one branch of government and avoid autocracy. This principle applies at all levels of government and should be protected. The implications of ISLT for Arizona and other states would be staggering."

Pinny Sheoran, president, LWV of Arizona

California

"California voters chose to create the California Citizens Redistricting Commission to ensure that voters, not politicians, pick their legislative representatives. The drawing of legislative and congressional districts by the people is an important part of democracy. The potential adoption of an independent state legislature theory by the US Supreme Court threatens the Commission's crucial work in safeguarding democracy."

Carol Moon Goldberg, president, LWV of California

Colorado

"Checks and balances are fundamental to our democracy, and allowing politicians to ignore voter intent is inherently anti-democratic. Colorado voters deserve to have their voices heard, not ignored and overturned by politicians."

Beth Hendrix, executive director, LWV of Colorado

Connecticut

"While Connecticut has a pro-voter track record when it comes to ease of voter registration, we are still one of only four states without early voting and still require an excuse to vote by absentee ballot. While the League and other voting rights organizations are hard at work on these initiatives to make voting more convenient for eligible citizens in Connecticut, giving politicians unlimited control and authority to determine rules for federal elections is exactly the opposite of protecting the rights of voters. Voting rights cannot and should not be beholden to the whims of the party in control of the

legislature."

Laura Smits, president, LWV of Connecticut

Florida

"The League of Women Voters of Florida knows firsthand the importance of a state supreme court's ruling on state legislation pertaining to federal elections. In 2015, in *League of Women Voters of Florida v. Detzner*, our state supreme court curtailed the illegal actions of our state legislature when it improperly drew redistricting lines. Allowing state legislators free rein to devise rules for federal elections without state court review would create a confusing set of rules for federal elections and a completely different set for state elections."

Cecile Scoon, Esq., president, LWV of Florida

Georgia

"Georgia's election offices are still adjusting to significant changes in voting laws in the wake of the 2020 election. ISLT could throw Georgia elections into further chaos. Asking election officials to administer two separate processes during the same election will overburden these dedicated offices and needlessly confuse voters. We should make running elections and voting easier for our communities — not harder."

Susannah Scott, president, LWV Georgia

Illinois

"In Illinois, the League of Women Voters has worked to advance election law that improves and protects voter access and eliminates barriers to voting. A decision by the Supreme Court giving state legislatures unchecked power to administer federal elections in any way they see fit will result in differing election processes for state and federal offices. This would make election administration for Illinois' 108 election authorities so unnecessarily complex as to endanger the rights of every voter. Fair and accessible elections are the cornerstone of our representative democracy. Removing the power of the governor and the courts to check any action by the state legislature regarding elections would be antithetical to our American system."

Allyson Haut, president, LWV of Illinois

Kansas

"Kansas voters have come to expect fair and accessible elections, free from partisan tampering by our state legislators. If the ISLT is adopted, Kansas voters will see their voices drowned out by the ambitions of politicians. ISLT will make Kansas elections prohibitively complex, making it harder for the will of the people to be heard."

Martha Pint, co-president, LWV of Kansas

Maine

"The people of Maine have established a system of checks and balances. Our House and Senate do not act alone but only in concert with other branches and with the people themselves exercising their citizen initiative powers. Some of our most important voter protections and innovations resulted from actions taken by the voters themselves, including same day registration, ranked choice voting, and public funding of elections. A decision in this case embracing ISLT would put these processes and protections in jeopardy."

Jill Ward, president, LWV of Maine

Maryland

"The rights of Marylanders to fair representation in Congress were upheld when Judge Lynne Battaglia ruled against the map drawn and adopted by the Democratically controlled Maryland General Assembly. She ordered them to redraw it before the 2022 election. We should not interfere with the structures that were put into place by the Constitution to protect against unchecked power of any branch of government."

Nancy Soreng, president, LWV of Maryland

Massachusetts

"The adoption of the Independent State Legislature Theory ("ISLT") by the US Supreme Court would allow politicians nearly unrestricted authority to thwart the will of Massachusetts voters in federal elections. Checks and balances, the underpinning of our democracy, must be preserved. Adoption of the ISLT will erode well-established and fair checks and balances already in place in Massachusetts."

Elizabeth Foster-Nolan, president, and **Patricia Comfort**, executive director, LWV of Massachusetts

Michigan

"We support making elections clear and concise for voters. Confusion — which is guaranteed if the Court embraces ISLT — is an effective tactic to truly wreak havoc on our democracy and disenfranchise voters."

Christina Schlitt and **Paula Bowman**, co-presidents, LWV of Michigan

Minnesota

"Minnesota continues to turn out the highest rate of voters across the United States in federal elections, with nearly 100% accuracy as shown by our post-election audits. This is in large part to the trust our voters put in our system of checks and balances that ensure every vote matters, and is counted accurately. But adopting the Independent State Legislature Theory would grossly undo those checks and balances, sow chaos and confusion, and ultimately suppress voting as people lose confidence in a system that would no longer ensure the power of their vote. We must stand strong to preserve the sharing of power among all three branches of our government, which is central to a thriving democracy, and to uphold the trust our voters have that their vote will indeed continue to matter."

Michelle Witte, executive director, LWV of Minnesota

Missouri

"LWV of Missouri is currently challenging several provisions of a new anti-voter bill that we believe violates both the Missouri and US Constitutions. The courts must be able to determine the constitutionality of the work of overly-politicized legislatures and protect our right to vote."

Marilyn McLeod, president, LWV of Missouri

Nebraska

"Nebraska is unique in that we have only one house — the Unicameral. The people of Nebraska are considered the second house, and the initiative process is a key component of enacting change in our state. The Independent State Legislature Theory could endanger the input of the public in our state. It

could allow politicians to manipulate the outcome of elections and would remove the checks and balances outlined in our Nebraska Constitution.

MaryLee Moulton, president, LWV of Nebraska

New Hampshire

“In New Hampshire the League and many others fought valiantly for fair maps in the redistricting process. The governor’s veto and the New Hampshire Supreme Court’s ruling on the congressional map saved us from a deliberately partisan gerrymandered plan. Had the New Hampshire Legislature been completely independent, as proposed by the ISLT, the outcome would have violated our ‘purple’ state status at the congressional level.”

Liz Tentarelli, president, LWV of New Hampshire

New Jersey

"Even in voter-friendly states like New Jersey, adoption of the Independent State Legislature Theory risks undoing decades of critical election reforms based on changing political will. What’s more, New Jersey's unique redistricting commissions, separate from our legislature, would also be in jeopardy. The ISLT doctrine would open the doors to unlimited partisan gerrymandering and could undermine the ability of New Jersey's increasingly diverse population to elect candidates of their choosing."

Jennifer M. Howard, president, LWV of New Jersey

New Mexico

"We are adamantly opposed to the Independent State Legislature Theory, which we view as a form of voter suppression. Not only would the practical impact of divided election laws — one set for federal and one set for state/local — make voting more difficult, but with no oversight or accountability, legislators will be able to make redistricting maps for partisan gain and deny the people a meaningful choice in electing their representatives."

Hannah Burling, president, LWV of New Mexico

New York

"A decision allowing state legislatures to overrule state courts and state Constitutions would cause major disruption to our election system by potentially nullifying state constitutional provisions as applied to federal elections and damaging our democracy in the process. Election administration in the states could be thrown into chaos as state officials could have to run two elections simultaneously since only state elections would be subject to the state Constitution. The result would inevitably be detrimental to state election administration and state and federal court systems as they try to resolve disputes over election rules, and not least of all voters."

Judie Gorenstein, president, LWV of New York State

North Carolina

"Extreme partisan gerrymandering continues to be the battle for fair maps in North Carolina. In February of 2022, our state supreme court issued a historic ruling that partisan gerrymandering violates the North Carolina Constitution and ordered new maps drawn. LWV of North Carolina has been educating our communities about the *Moore v. Harper* case and its effects on their communities. We will continue to fight for fair maps for everyone."

Jo Nicholas, president, LWV of North Carolina

Ohio

"LWV of Ohio calls on the US Supreme Court to stand with voters by rejecting this extremist attack on our democracy. Our republic is strengthened by the system of checks and balances that petitioners are seeking to dismantle. LWV of Ohio has fought partisan gerrymandering since the 1970s, holding both major political parties accountable for rigged maps. This election, Ohio voters are voting in districts that have been struck down by the Ohio Supreme Court as violating redistricting provisions added to the Ohio Constitution by more than 70% of voters. We rely on state courts to uphold voters' rights to free, fair, and meaningful elections, and the Supreme Court should not disturb this system of checks and balances."

Jen Miller, executive director, LWV of Ohio

Oregon

"LWV Oregon stands with all 50 state Leagues of Women Voters to protect our elections from state government partisan gerrymandering."

Rebecca Gladstone, president LWV of Oregon

Pennsylvania

"The League of Women Voters of Pennsylvania has fought for years to ensure that redistricting is independent, impartial, and reflective of all voters. In *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania*, the Pennsylvania Supreme Court struck down Pennsylvania's 2011 congressional map as an unconstitutional partisan gerrymander under the state Constitution. The ISLT doctrine would undo decades of progress, and remove the governmental checks and balances in our state. We will continue to fight for a redistricting process that protects our democratic process and institutions — a balanced and fair system that voters deserve."

Samantha Apgar, president, LWV of Pennsylvania

South Carolina

"A decision on behalf of the petitioners would set a dangerous precedent. South Carolinians would have no recourse to challenge partisan gerrymandering or voter suppression legislation in state court."

Nancy Williams, president, LWV of South Carolina

Texas

"Texas already has the most restrictive voting rights in the country and the most elections in a year. If ISLT is adopted, it will cause even more confusion in what are already complex and numerous elections for Texas voters, election administrators, poll workers, and voter education and rights organizations."

Joyce LeBombard, president, LWV of Texas

Utah

"Voters should be able to protect their rights under their state Constitutions in general, and the Supreme Court should not undermine that ability when it

decides *Moore v. Harper*."

Katharine Biele, president, LWV of Utah

Virginia

"LWV of Virginia supports checks and balances of power to keep our democracy strong and protect Virginia voters."

Deb Wake, president, LWV of Virginia

Washington

"Washington voters saw how the redistricting process was manipulated after the last census to advantage incumbents. We do not need politicians to decide the outcome of elections at any stage of the process. The Independent State Legislature Theory would allow that to happen. The League of Women Voters of Washington works tirelessly to refine and develop systems that work for Washington voters; ISLT is not a system that we need."

Lunell Haught, president, LWV of Washington State

Washington, DC

"This case is all about muting the voices of voters. Because we lack statehood, the voices of 700,000 of us living in the District of Columbia have been silenced for over 200 years. Our democracy is built on each of us having an equal voice, a voice that will be counted regardless of race or zip code. We must honor and protect the voice of each voter as a core building block of our nation.

Kathy Chiron, president, LWV of the District of Columbia

Wisconsin

"If ISLT becomes law, the damage to Wisconsin's electoral politics will be severe. Wisconsin's 2022 redistricting map, one of the most highly partisan gerrymandered maps in the United States, will remain in place for decades to come, as the legislators currently in power will be guaranteed to keep their seats. Further, the floodgates will open for more legislatively restricted voting rights, also not subject to a gubernatorial veto, which, in this last legislative session, stopped more than 100 bills designed to limit voting access. Under ISLT, electoral challenges in state court will be moot, as the Wisconsin

legislature will have plenary power to continue the status quo indefinitely and the core principles of judicial review and the separation of powers will be non-existent in Wisconsin's electoral politics."

Debra Cronmiller, executive director, LWV of Wisconsin

Wyoming

"In the US Supreme Court case, *Moore v. Harper*, the Court could rule in favor of a fringe political theory called the Independent State Legislature Theory (ISLT). If adopted, ISLT would remove checks and balances at the state level, giving Wyoming state legislatures nearly unrestricted authority to set the rules for federal elections. Unlike today, Wyoming's governor and state courts would no longer have a say in state legislation concerning federal election rules. Wyoming legislators could create different rules for federal and state elections. Not only would this be confusing to voters, their implementation would add additional costs, both monetary and time, to Wyoming's already overburdened election offices. The League of Women Voters of Wyoming supports fair elections and stands behind governmental checks and balances — the sharing of power among the three branches of government — which are central to democracy."

Nancy Lockwood, president, LWV of Wyoming

Oral arguments for *Moore v. Harper* will be heard by the US Supreme Court on December 7, 2022. [Read the amicus brief here.](#)

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