

WASHINGTON — On October 26, 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 League representatives:

### **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

### **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

### **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

### **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 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

### **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

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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### **What did Wyoming Say?**

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, LWVWY President**

Supreme court oral arguments are available online at  
[https://www.supremecourt.gov/oral\\_arguments/argument\\_audio/2022/](https://www.supremecourt.gov/oral_arguments/argument_audio/2022/)  
Moore Vs Harper will be heard December 7, 2022.