Exhibit A

Proposed Supplemental Findings of Fact Relevant to District-Specific Claims of the *Common Cause* Plaintiffs

<u>TABLE OF CONTENTS</u>

2

The Relevance of the Districts Drawn for the 2011 Plan

1.   In enacting North Carolina's 2016 Congressional Redistricting Plan (the "2016 Plan"), the North Carolina General Assembly expressly required that individual districts be drawn to give the Republican Party and its voters a "partisan advantage" over the Democratic Party and its voters. The map drawer followed this express instruction and drew district lines that would, based on the reliable results of a set of past elections, achieve the intended partisan effect: an assembly of individual districts engineered to maintain the partisan makeup of North Carolina's congressional delegation under the invalidated 2011 Congressional Redistricting Plan (the "2011 Plan").

2.   This case and the earlier case invalidating the 2011 plan—*Harris v. McCrory*, 159 F. Supp. 3d 600, 604 (M.D.N.C. 2016)—are inextricably linked. In *Harris*, Representative David Lewis, Senator Robert Rucho, and Dr. Thomas Hofeller manipulated the Voting Rights Act to gain partisan advantage for the Republican Party. They defended particular, individual racially-gerrymandered 2011 districts on the grounds that those individual district lines were drawn for political rather than racial reasons.

3

3.   Indeed, in briefing before the Supreme Court in *Harris*, the lawyers for

Rep. Lewis and Sen. Rucho told the Court:

> Dr. Hofeller's second priority, as instructed by the
> Republican Chairmen, was to 'draw maps that were
> more favorable to Republican candidates' and ***in
> particular 'to weaken Democratic strength in
> Districts 7, 8, and 11…by concentrating Democratic
> voting strength in Districts 1, 4, and 12.***

Ex. 2043, pp. 33-34 (emphasis added). To be clear, the legislative

defendants in this case then argued—to the Supreme Court—that the 2011

Plan relied on the manipulation of individual district lines for partisan

advantage.

4.   And the partisan effect of drawing these individual districts for partisan

advantage was equally clear. As the lawyers for Rep. Lewis and Sen.

Rucho also told the Supreme Court:

> The results of the 2012 election—the first under the
> new plan—underscored the political motivations ***in the
> redrawing of CD 12 and the surrounding districts.***
> Republicans turned a 7-6 Democratic advantage into a
> 9-4 Republican advantage—***a majority that included
> <u>four of the five districts</u> that they designed the 2011
> plan to make more competitive.*** That trend continued
> in 2014, when Republicans added the fifth district, CD
> 7, to their ledger.

Ex. 2043, p. 34 (emphasis added).

4

5.   In remedying the racial gerrymander struck down in *Harris*, Rep. Lewis and Sen. Rucho sought to maintain the partisan advantage gained by the unconstitutional 2011 districts. And Dr. Hofeller's role in drawing the 2016 maps was vital to maintaining the partisan advantage obtained by the 2011 plan.

6.   Dr. Hofeller served as an expert witness for these same legislative defendants in *Harris*. At deposition in this case, Dr. Hofeller affirmed several opinions he earlier offered as an expert. First, Dr. Hofeller affirmed that "[p]olitics was the primary policy determinant in drafting of the [2011] Plan." Hofeller Depo. 115:20-21, 116:5-10; Ex. 2035, p. 8. Second, Dr. Hofeller affirmed that the new Republican majority in control of both houses of the North Carolina General Assembly in 2011 intentionally gerrymandered North Carolina's congressional districts by packing as many Democratic voters as possible into three districts, thereby also strengthening the Republican majorities in the remaining districts by removing Democratic voters from those districts. Ex. 2035, p. 8.

7.   Specifically, Dr. Hofeller stood by his earlier expert testimony that "[t]he General Assembly's goal [in 2011] was to increase Republican voting strength in New Districts 2, 3, 6, 7 and 13" and that "[t]his could only be

accomplished by placing all the strong Democratic [Voter Districts] in either New Districts 1 or 4." Hofeller Depo. 116:19-117:25; Ex. 2035, p. 12; *see also* Hofeller Depo. 126:9-127:12; Ex. 2036, p. 4 ("The Republican strategy was to weaken Democratic strength in Districts 7, 8 and 11; and to completely revamp District 13, converting it into a competitive GOP District.").

8.   In Dr. Hofeller's own words, "[t]he General Assembly's overarching goal in 2011 was to create as many safe and competitive districts for Republican incumbents or potential candidates as possible." Hofeller Depo. 118:19-119:23 (emphasis added); Ex. 2035, p. 23. Dr. Hofeller admitted that this not only entailed drawing "districts in which Republicans would have an opportunity to elect Republican candidates" but necessarily also required "minimiz[ing] the number of districts in which Democrats would have an opportunity to elect a Democratic candidate." Hofeller Depo. 127:14-22. He also admitted that the opportunities of Democratic voters that remained in the districts in which he had increased Republican voting strength to elect a Democratic candidate of their choice would be diminished. Hofeller Depo. 128:17-21.

6

9.   All of this testimony makes clear that the statewide goal of the plan—as admitted by the mapdrawer—could only be realized by manipulating individual district lines. And the manipulation of those lines for the purpose of building the districts in the 2011 plan is beyond dispute. Indeed, it formed the core of the legislative defendants' appeal of the *Harris* ruling.

10.   Moreover, record evidence in this case shows that this was part and parcel of a broader national effort—Project REDMAP, funded by the Republican State Leadership Committee. The goal of that project—in which both Dr. Hofeller and North Carolina played an integral role—was explicit: to solidify Republican control of the US House of Representatives for the next decade by "creat[ing] 20 to 25 *new Republican congressional districts* through the redistricting process over the next five election cycles." Hofeller Depo. 57:14-60:24 (emphasis added); Ex. 2021, p.1; Ex. 2022, p. 6; Ex. 2015, p. 4; Ex. 2016.

11.   The mechanism for creating those "new Republican congressional districts" was equally clear and "straightforward: Controlling the redistricting process in these states would have the greatest impact on determining how . . *congressional district boundaries* would be drawn." Ex. 2026, p. 2 (emphasis added); Ex. 2015, p. 4.

7

12.   In 2011, the legislative defendants in this case (and in *Harris* before it) instructed Hofeller to create an assembly of districts that would maximize the number of Republican seats and minimize the number of seats held by Democrats. Hofeller Depo. 120:17-121:9, 123:1-124:3, 125:7-13. At that time, Hofeller believed it was possible "to ***draw ten districts*** in which the Republicans would either be most likely to win or would have an opportunity to win." Hofeller Depo. 121:19-22 (emphasis added).

The Process of Drawing the Districts for the 2016 Plan

13.   In 2016, the legislative defendants instructed Dr. Hofeller to create an assembly of districts that would maintain the partisan advantage the Republican Party and Republican candidates had established under the invalidated 2011 plan. Lewis Depo. 38:15-40:4; Rucho Depo. 33:6-23.

14.   To address this goal, Sen. Rucho and Rep. Lewis orally instructed Dr. Hofeller to use political data, specifically election results from a basket of statewide elections, to assign voters to individual districts that would likely yield a statewide partisan result of ten Republican seats and three Democratic seats. In keeping with that instruction as to the drawing of

8

individual districts, the legislators also instructed Dr. Hofeller that he was to try to avoid the pairing of the incumbents elected in 2014 under the invalidated 2011 Plan (ten of whom identified as Republicans). Lewis Depo. 116:8-117:13; 55:7-57:19.

15. As to the mechanism by which these individual districts were drawn, Dr. Hofeller testified that he viewed these past election results when using commercial software—Maptitude—on his personal computer to draw congressional districts. That software—loaded with the results of past elections—enabled Dr. Hofeller to view voting history data (for a single election or a set of elections) and to display that data by assigning it a color "thematic." This "thematic" represented—according to various and adjustable metrics determined by Dr. Hofeller at his discretion—the partisan voting history of a given unit of geographical area, most importantly at the level of a single voter district (VTD). Hofeller Depo. 101:19-107:4.

16. Indeed, legislative defendants admit to viewing past election results for the exact purpose of determining the political fortunes of *individual districts* Dr. Hofeller was drafting for the 2016 Plan. Lewis Depo 49:13-51:21 (evaluating the "likely partisan outcome" of the newly-drawn 12th District); *id.* at 135:20-136:7 (same); *id.* at 62:11-65:1 (using the 2014

9

Tillis-Hagan Senate race results to evaluate political performance within Buncombe County); *id.* at 129:18-131:9 (admitting to "evaluat[ing] the likely outcome of congressional races in the newly designed districts" prior to presenting the plan to the General Assembly); *id. at* 126:19-128:9 (same); *id.* at 151:1-157:1 (discussing, at length, the partisan strength of individual districts based on the review of past election results used for the drawing of those same districts by Dr. Hofeller).

17.   The evidence that Dr. Hofeller built individual districts for partisan advantage is overwhelming. Even if it were not, however, the Adopted Criteria used by the North Carolina expressly directed the drawing of individual districts for partisan advantage. Rep. Lewis, aided by Sen. Rucho, presented seven criteria to the Joint Committee for adoption. Ex. 1005, pp. 12-104; Ex. 1007. These "proposed" criteria mirrored the oral instructions Dr. Hofeller had received from Sen. Rucho and Rep. Lewis before and as he drew the 2016 districts. As Sen. Rucho told the Senate Committee on February 18: "I'll be clear, the criteria that Representative Lewis has submitted is the criteria that was used to draw the maps, and probably that's as much as we need to know." Ex. 1009, p. 24:1-4.

10

18.   At least two, and more accurately three, of the seven criteria adopted by the

Joint Committee on February 16, 2016 are explicitly partisan in the

direction given to the mapmaker as to how he should "construct" individual

districts: (a) the use of that "political data"—past election results—to

determine the population included in a given district; (b) the explicit goal of

preserving the 10-3 Republican seat advantage in individual districts gained

under the then-just-invalidated 2011 Plan and (c) the decision to avoid

pairing 2014 incumbents where 77% of the incumbents identify as

Republicans.

19.   By their own language, these three criteria specifically provide:

<div align="center">Political data</div>

The only data other than population data to be ***used to construct congressional
districts*** shall be election results in statewide contests since January 1, 2008, not
including the last two presidential contests.

<div align="center">Partisan Advantage</div>

The partisan makeup of the congressional delegation under the enacted plan is 10
Republicans and 3 Democrats. The Committee shall make reasonable efforts ***to
construct districts*** in the 2016 Contingent Congressional Plan to maintain the
current partisan makeup of North Carolina's congressional delegation.

<div align="center">Incumbency</div>

Candidates for Congress are not required by law to reside in a district they seek to
represent. However, reasonable efforts shall be made to ensure that incumbent
members of Congress are not ***paired with another incumbent in one of the new
districts constructed*** in the 2016 Contingent Congressional Plan.

Ex. 1007 (emphasis added).

20. Further, the criteria also generally called for a reduction in the 40 counties split in the 2011 map but preserved Dr. Hofeller's discretion to divide counties—when constructing individual districts—to protect the Republicans' 10-3 partisan advantage. Ex. 1007.

21. Amendments that would have made it more difficult to construct an assembly of individual districts that would meet the 10-3 partisan advantage goal were rejected on party line votes. Ex. 1006, pp. 24, 26 and 28. One of these would have prohibited the division of counties for any reason other than population equality. *Id.* at p. 23. Others would have required the preservation of communities of interest. *Id.* at pp. 25 and 27. Such criteria would, however, have prevented Dr. Hofeller from constructing individual districts that split Democratic population centers, such as Asheville, and would have thwarted that partisan goal, as Defendants' expert Dr. Hood acknowledged. Tr. T. Vol. IV, pp.42:6-43:4.

22. And we know from the record that Dr. Hofeller in fact rejected alternative maps that constructed individual districts with less partisan bias. *See*, e.g., Ex. 4023-24 (showing draft plans created by Dr. Hofeller in 2016 that would have—relative to the 2016 enacted plan—cracked and packed fewer North Carolina voters).

12

23. Prior to passage of the 2016 Plan by the General Assembly, Rep. Lewis even explained *how* political data would be used in the construction of individual districts to gain partisan advantage. He said: "[I]f you are trying to give a partisan advantage, you would want to **draw the lines** so that more of the whole VTDs (voter tabulation districts) voted for the Republican on the ballot than they did the Democrat." Ex. 1005, p. 57:12-16 (emphasis added). Perhaps most tellingly, Rep. Lewis stated: "I propose that we draw the maps to give a partisan advantage to 10 Republicans and 3 Democrats because I do not believe it's possible to draw a map with 11 Republicans and 2 Democrats." *Id.* at p. 50:7-10.

24. And, again, we know from the record that Dr. Hofeller did just that in 2016. Though there is some dispute as to precisely how Dr. Hofeller evaluated moving single VTDs from district to district (his testimony on the issue is not the model of candor), there is no dispute that Dr. Hofeller in fact viewed "thematics" in Maptitude to evaluate the partisan effect of particular county-line splits. *Compare* Exs. 4066-4077, 4081 (declaration of and maps created by Timothy Stallman) *with* Exs. 5104-5116 (declaration of and maps created by Dr. Thomas Hofeller).

13

25. Sen. Rucho's comments similarly establish the partisan intent of the constructing the districts that would ultimately make up the 2016 Plan. In speaking to the full Senate, Sen. Rucho informed the Senate that his goal in drawing the new plan was to preserve the partisan advantage Republicans had obtained through the illegal 2011 plan. Ex. 1011, p. 81. And at a Senate Committee meeting following that floor session, Rucho told his colleagues that the election data they had been provided was to "***build[ ] these districts***." Ex. 1009, p. 10 (emphasis added).

The Clear Partisan Effect of The Districts Drawn for the 2016 Plan
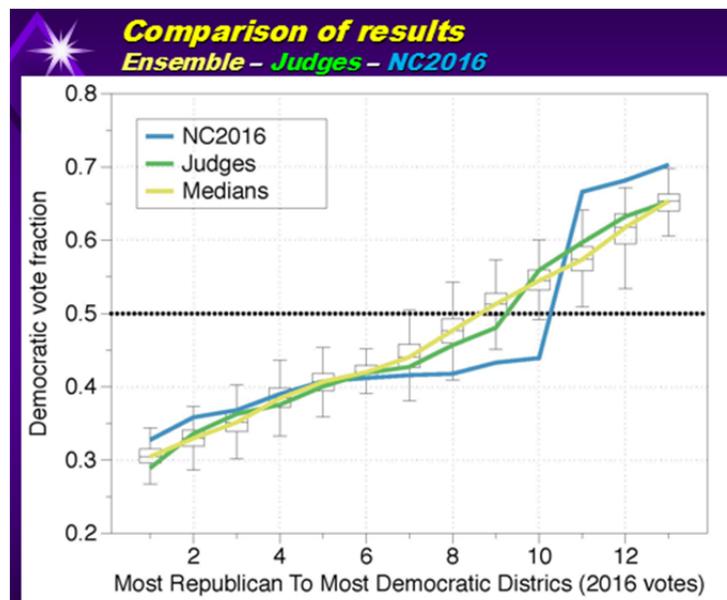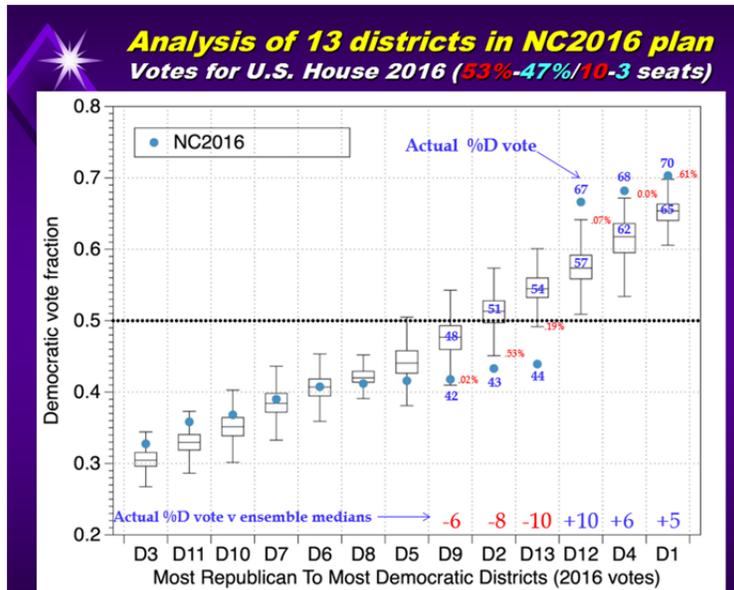
(Ex. 3040 pp. 29-30)

26. From his ensemble of 24,000+ simulated redistricting maps, Dr. Jonathan Mattingly produced a box plot that reveals the most likely election outcomes *by district* from the most Republican district in each simulated map to the most Democratic district. The box plot reveals the median and range of Democratic vote fractions for each of the 13 districts arrayed from most Republican to most Democratic. Tr. T. Vol. I, pp. 50:12-51:24. On the first Power Point slide above, Dr. Mattingly also plotted the *actual* Democratic vote fraction in each of the enacted plan's 13 districts in the 2016 general election, arrayed from most Republican (CD 3) to most Democratic (CD 1). By doing so, he was able to demonstrate how the three most Democratic districts in the enacted plan were packed with Democratic voters far beyond the Democratic vote fraction in the most Democratic districts in his ensemble of simulated maps; he was also able to demonstrate how Democratic vote fractions in the fourth, fifth, and sixth most Democratic districts in the enacted plan were significantly diluted—or cracked—as compared to the fourth, fifth, and sixth most Democratic districts in the 24,000+ simulated maps in his ensemble. Tr. T. Vol. I, p. 70:1-9. The first Power Point slide above demonstrates that the fourth, fifth, and sixth most Democratic districts in Dr. Mattingly's ensemble were competitive districts, with the median Democratic vote fraction ranging from 48% to 54%; in contrast, the fourth, fifth, and sixth most Democratic

16

districts in the 2016 enacted plan were not at all competitive, with the Democratic vote fraction in these three districts ranging from 42-44%.

27.   On the second Power Point slide above, the blue "S curve" (representing the 2016 general election results under the enacted plan) demonstrates the packing and cracking of numerous congressional districts—particularly CD 13, CD 2, and CD 9—where the blue line deviates sharply from the yellow line connecting the medians of the Democratic vote fractions in the 13 districts—arrayed from most Republican to most Democratic—in each of Dr. Mattingly's 24,000+ simulated maps. Tr. T. Vol. I, pp. 76:13-77:5.

28.   Dr. Mattingly's box plot establishes that the enacted plan packed Democratic voters into CD 1, CD 4, and CD 12 far beyond what could have resulted from North Carolina's political geography or the application of neutral, non-partisan redistricting criteria. Those three districts resulted in approximately 750,000 total Democratic votes in the 2016 general election. Tr. T. Vol. I, pp. 72:7-73:14. In contrast, not a single simulated map in Dr. Mattingly's ensemble of 24,000+ simulated maps would have had as many Democratic votes in its three most Democratic districts combined. Tr. T. Vol. I, p. 71:2-12. As a result of the packing of Democratic voters into these three districts, Democratic voters assigned to CD 1, CD 4, and CD 12

17

have had their votes diluted and suffered and injury in fact. That is because these three districts are so packed with Democratic voters that a Democratic candidate is assured of winning in landslide elections no matter how low the level of Democratic voter turnout, resulting in large numbers of Democratic votes being wasted, just as Defendants intended.

29. As the direct—and intended—result of the packing Democratic voters into CD 1, CD 4, and CD 12, the number of Democratic voters assigned to the next most Democratic districts, CD 13, CD 2, and CD 9, has been diluted far below what could have resulted from North Carolina's political geography or application of neutral, non-partisan redistricting criteria. Each of these three districts were cracked by the 2016 enacted plan, which resulted in less than 600,000 total Democratic votes in those districts in the 2016 general election. Tr. T. Vol. I, pp. 71:2-72:2. In contrast, not a single simulated map in Dr. Mattingly's ensemble of 24,000+ simulated maps would have had as few Democratic votes in its fourth, fifth, and sixth most Democratic districts combined. Tr. T. Vol. I, p. 71:13-20. As a result of the cracking of these three districts, Democratic voters assigned to CD 13, CD 2, and CD 9 have had their votes diluted and suffered an injury in fact. That is because these three districts have been so diluted of Democratic

18

voters that a Democratic candidate has virtually no chance of winning no matter how high the level of Democratic voter turnout.

30.   Dr. Mattingly's analysis thus confirms that Dr. Hofeller succeeded as he testified he intended in diluting the votes of the Democratic plaintiffs who reside in CD 1, 2, 3, 4, 6, 7, 8, 11, 12 and 13. *See supra* ¶ 7.

31.   Common Cause Plaintiff Larry Hall, a Democratic voter, resided at 1526 Southwood Drive in Durham, Durham County, which placed him in CD 1 in the enacted plan. Hall Dep. p. 12:6-9. Larry Hall testified at his deposition that the impact of his vote was reduced based on the design of his district. Hall Dep. pp. 15:8-10; 17:12-24. CD 1 received the highest Democratic vote fraction of all 13 congressional districts in the 2016 general election with a Democratic vote fraction of 70.3%. CD 1 had a higher Democratic vote fraction than 99.39% of the districts that had the highest Democratic vote fraction in each of the 24,000+ simulated maps in Dr. Mattingly's ensemble, Tr. T. Vol. I, p. 72:10-13, and had a 5% higher Democratic vote fraction (70% vs. 65%) than the median Democratic vote fraction for the districts that had the highest Democratic vote fraction in Dr. Mattingly's ensemble. Plaintiff Larry Hall's vote was diluted as the result

19

of the packing of Democratic voters into CD 1 and he has suffered an injury in fact.

32. Common Cause Plaintiff Alice Bordsen, a Democratic voter, resided at 706 Copperline Drive, #202, in Chapel Hill, Orange County, which placed her in CD 4 in the enacted plan. Bordsen Dep. p. 12:10-12.[1] Plaintiff Bordsen testified at her deposition about the harms of hyper-partisanship, and the stifling effect on voters caused by the packing of her district. Bordsen Dep. pp. 17:7-17; 19:3-7 ("For Democrats, you know, you're just packed in there. What difference if you go vote or not: A Democrat is going to win. For a Republican, why would they go vote: They're never going to win."). CD 4 received the second highest Democratic vote fraction of all 13 congressional districts in the 2016 general election with a Democratic vote fraction of 68.2%. CD 4 had a higher Democratic vote fraction than 100% of the districts that had the second highest Democratic vote fraction in each of the 24,000+ simulated maps in Dr. Mattingly's ensemble, Tr. T. Vol. I, p. 72:13-15, and had a 6% higher Democratic vote fraction (68% vs. 62%)

---

[1] Plaintiff Borsden recently moved her residence from CD 4 to CD 6. Likewise, Plaintiff Morgan recently moved his residence from CD 6 to CD 4. *See Common Cause* Plaintiffs' Post-Trial Findings of Fact and Conclusions of Law ("Post-Trial FOF"), Dkt. 117, 1:16-CV-1026, at ¶ 158.

than the median Democratic vote fraction for the districts that had the second highest Democratic vote fraction in Dr. Mattingly's ensemble. Plaintiff Alice Bordsen's vote was diluted as the result of the packing of Democratic voters into CD 4 and she has suffered an injury in fact.

33.   Common Cause Plaintiff Morton Lurie, a Republican voter, resided at 4112 Landfall Court, Raleigh, Wake County, which placed him in CD 4 in the enacted plan. Lurie Dep. p. 19:14-16. Plaintiff Lurie testified at his deposition that his vote is diluted because there is no chance of a Republican winning CD 4. Lurie Dep. p. 25:15-24. CD 4 received the second highest Democratic vote fraction of all 13 congressional districts in the 2016 general election with a Democratic vote fraction of 68.2%. CD 4 had a higher Democratic vote fraction than 100% of the districts that had the second highest Democratic vote fraction in each of the 24,000+ simulated maps in Dr. Mattingly's ensemble, Tr. T. Vol. I, p. 72:13-15, and had a 6% higher Democratic vote fraction (68% vs. 62%) than the median Democratic vote fraction for the districts that had the second highest Democratic vote fraction in Dr. Mattingly's ensemble. Plaintiff Morton Lurie's vote was diluted as the result of the dilution of Republican voters in CD 4 that resulted from the packing of CD 4 with Democratic voters and he has suffered an injury in fact.

21

34.   Common Cause Plaintiff John Gresham, a Democratic voter, resided at 717 E. Kingston Ave., Charlotte, Mecklenburg County, which placed him in CD 12 in the enacted plan. Gresham Dep. p. 8:16-18. Mr. Gresham testified that his district was packed with Democratic voters in order to give Republicans a 10-3 statewide advantage. Gresham Dep. p. 25:3-6. The packing of CD 12 harmed Plaintiff Gresham by diluting the impact of his vote and also by taking away his ability to ever elect a qualified Republican candidate in the district, should he choose to support such a candidate. Gresham Dep. p. 34:17-22. CD 12 received the third highest Democratic vote fraction of all 13 congressional districts in the 2016 general election with a Democratic vote fraction of 66.6%. CD 12 had a higher Democratic vote fraction than 99.93% of the districts that had the third highest Democratic vote fraction in each of the 24,000+ simulated maps in Dr. Mattingly's ensemble, Tr. T. Vol. I, p. 72:15-18, and had a 10% higher Democratic vote fraction (67% vs. 57%) than the median Democratic vote fraction for the districts that had the third highest Democratic vote fraction in Dr. Mattingly's ensemble. Plaintiff John Gresham's vote was diluted as the result of the packing of Democratic voters into CD 12 and he has suffered an injury in fact.

22

35. Common Cause Plaintiff Russell G. Walker, Jr., a Democratic voter, resided at 104 Jordan Ridge Way, Jamestown, Guilford County, which placed him in CD 13 in the enacted plan. Walker Dep. p. 12:7-9. Judge Walker testified that his vote is diluted because no candidate he supports has any chance of winning CD 13. Walker Dep. p. 28:14-17. CD 13 received the fourth highest Democratic vote fraction of all 13 congressional districts in the 2016 general election with a Democratic vote fraction of 43.9%. CD 13 had a lower Democratic vote fraction than 99.81% of the districts that had the fourth highest Democratic vote fraction in each of the 24,000+ simulated maps in Dr. Mattingly's ensemble, Tr. T. Vol. I, p. 72:19-23, and had a 10% lower Democratic vote fraction (44% vs. 54%) than the median Democratic vote fraction for the districts that had the fourth highest Democratic vote fraction in Dr. Mattingly's ensemble. Plaintiff Russell G. Walker, Jr.'s vote was diluted as the result of the dilution of Democratic voters in CD 13 and he has suffered an injury in fact.

(Ex. 3042 p. 13)

36.   Further proof of the cracking of CD 13 is evident from the literal cracking

of the naturally occurring Democratic cluster in Greensboro—which was

split into two different congressional districts, CD 6 and CD 13, each of

which had overwhelming Republican majorities in the 2016 general

election. As Dr. Hood described in his testimony, the natural clustering of

partisans often leads to the placement of such a cluster into a single

congressional district. Tr. T. Vol. IV, pp. 44:22-45:1. He admitted that had

this occurred with the Greensboro Democratic cluster, the partisan

composition of the resulting district would have been more Democratic

than either CD 6 or CD 13. Tr. T. Vol. IV, pp. 45:24-46:5. Consequently,

the cracking of the Greensboro partisan cluster in the enacted plan—

resulting in only a portion of Greensboro being placed into CD 13—

resulted in the dilution of the voting power of Democratic voters in CD 13.

Plaintiff Russell G. Walker, Jr.'s vote was diluted as the result of the

24

dilution of Democratic voters in CD 13 and he has suffered an injury in fact.

37. The cracking of the Greensboro partisan cluster in the enacted plan also resulted in the dilution of the voting power of Democratic voters in CD 6 by removing Democratic voters from CD 6 that were part of the partisan cluster. Plaintiff Melzer Morgan, who resided at 1607 Courtland Ave., Reidsville, Rockingham County, who was placed into CD 6, testified that he does not have much voice in speaking to his congressman and that he has difficulty encouraging others to vote or support a candidate in his district. Morgan Dep. pp. 5:11-14; 22:16-19.[2] Plaintiff Morgan therefore suffered from the dilution of his vote by being placed into a cracked district and has suffered an injury in fact.

38. Common Cause Plaintiff Douglas Berger, a Democratic voter, resided at 125 Hunters Lane, Youngsville, Franklin County, which placed him in CD 2 in the enacted plan. Berger Dep. p. 29:6-9. Plaintiff Berger testified at his deposition that he would not contribute money to a congressional campaign under the current plan because the districts are not competitive,

---

[2] *See supra* n.1 regarding the fact that Plaintiff Morgan now resides in CD 4 and Plaintiff Borsden now resides in CD 6.

Berger Dep. p. 7:7-13, and even though his district was the "secondmost competitive" in 2016, the winning candidate had a 13-percentage point win. Berger Dep. p. 6:10-20. CD 2 received the fifth highest Democratic vote fraction of all 13 congressional districts in the 2016 general election with a Democratic vote fraction of 43.3%. CD 2 had a lower Democratic vote fraction than 99.47% of the districts that had the fifth highest Democratic vote fraction in each of the 24,000+ simulated maps in Dr. Mattingly's ensemble, Tr. T. Vol. I, pp. 72:23-73:1, and had an 8% lower Democratic vote fraction (43% vs. 51%) than the median Democratic vote fraction for the districts that had the fifth highest Democratic vote fraction in Dr. Mattingly's ensemble. Plaintiff Douglas Berger's vote was diluted as the result of the dilution of Democratic voters in CD 2 and he has suffered an injury in fact.


(Ex. 1001)

39.   Further proof of the cracking of CD 2 is the large swath of Wake County that was excised from that district and placed instead into CD 4. Nearly 64% of the voters in the swath of Wake County that was placed into CD 4 cast votes for the Democratic candidate for Governor in 2008, as compared to just 41.5% of the Wake County voters assigned to CD 2. 2008 Election Returns, Part 2, *available at* http://www.ncleg.net/GIS/Download/District-Plans/DB_2016/Congress/2016_Contingent_Congressional_Plan_Corrected/Reports/VTD_Statewide/rptVTDElec2008_2.pdf. Consequently, the effect of placing this swath of Wake County into CD 4, rather than CD 2, was to pack CD 4 with Democratic voters and dilute Democratic voting power in CD 2, thereby resulting in the cracking of that district. Plaintiff Douglas Berger's vote was diluted as the result of the dilution of Democratic voters in CD 2 and he has suffered an injury in fact.

40.   Common Cause Plaintiff John Morrison McNeill, a Democratic voter, resided at 225 East Third Ave., Red Springs, Robeson County, which placed him in CD 9 in the enacted plan. McNeill Dep. p. 8:16-19. CD 9 received the sixth highest Democratic vote fraction of all 13 congressional districts in the 2016 general election with a Democratic vote fraction of 41.8%. CD 9 had a lower Democratic vote fraction than approximately

27

99.98% of the districts that had the sixth highest Democratic vote fraction in each of the 24,000+ simulated maps in Dr. Mattingly's ensemble, Tr. T. Vol. I, pp. 72:23-73:1, and had a 6% lower Democratic vote fraction (42% vs. 48%) than the median Democratic vote fraction for the districts that had the sixth highest Democratic vote fraction in Dr. Mattingly's ensemble. Plaintiff John Morrison McNeill's vote was diluted as the result of the dilution of Democratic voters in CD 9 and he has suffered an injury in fact.

41.   At his deposition, Mr. McNeill testified that he was harmed "[b]ecause the districts have been packed with more Democratic voters in a few districts that those of us who are not living in those packed districts have less of a chance of our candidate of being elected and consequently my vote counting toward the candidate, if I chose a Democratic Party candidate." McNeill Dep. pp. 21:23–22:4. Mr. McNeill provided the following example of how the absence of a reasonable opportunity to elect a candidate who shares his policy preferences views harmed him and his neighbors: "I love going to Charlotte, but it has little in common with Robeson County and what our needs are." McNeill Dep. 26:16-18. CD 9 is represented by a businessman from Charlotte who has no concern for the needs of persons in the poor, rural counties joined with Charlotte. "Robeson county . . . was one of the lead counties in people signing up for

28

Obama Care" and that opportunity was 'very beneficial' to people "[i]n a low-income, rural community." McNeill Dep. pp. 26:24-27:8. Congressman Pittenger from Charlotte, however, "voted in favor of doing away with" that important program for Robesonians. McNeill Dep. p. 26:23. Because CD 9 has been engineered to elect a Republican candidate, Congressman Pittenger faces no electoral accountability for that policy position.
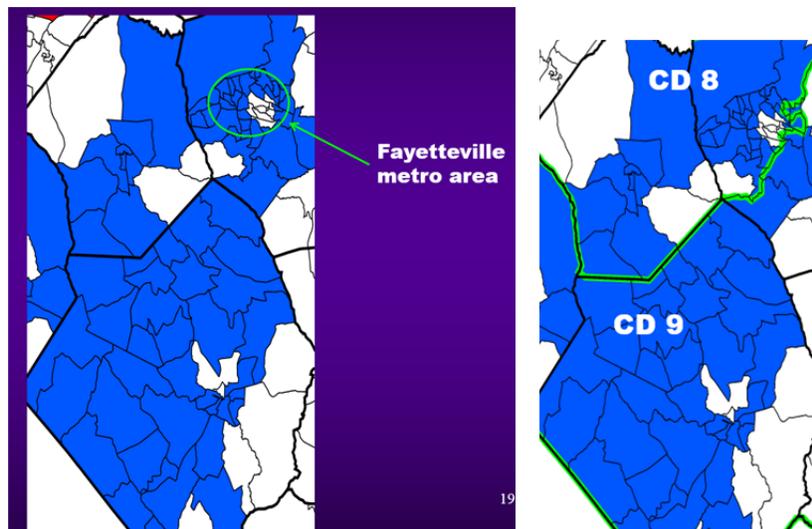
(Ex. 3042 pp. 19-20)

42. Further proof of the cracking of CD 9 is evident from the literal cracking of the naturally occurring Democratic cluster in Cumberland, Hoke, and Robeson Counties—which was split into two different congressional districts, CD 8 (which contained highly Democratic Fayetteville) and CD 9, each of which had overwhelming Republican majorities in the 2016 general
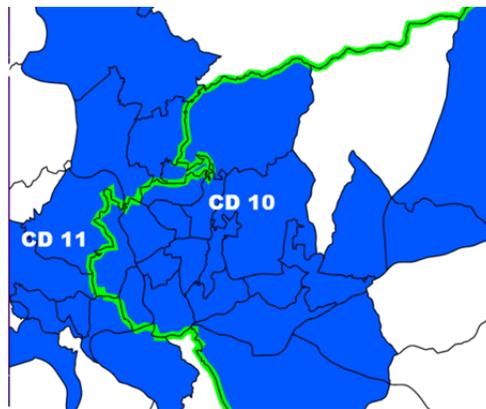
29

election. As Dr. Hood described in his testimony, the natural clustering of partisans often leads to the placement of such a cluster into a single congressional district. Tr. T. Vol. IV, pp. 44:22-45:1. He admitted that had this occurred with the Cumberland/Hoke/Robeson Democratic cluster, the partisan composition of the resulting district would have been more Democratic than either CD 8 or CD 9. Tr. T. Vol. IV, p. 50:12-24. Consequently, the cracking of the Cumberland/Hoke/Robeson partisan cluster in the enacted plan—which deliberately removed Fayetteville from CD 9—resulted in the dilution of the voting power of Democratic voters in CD 9. Plaintiff John Morrison McNeill's vote was diluted as the result of the dilution of Democratic voters in CD 9 and he has suffered an injury in fact.

43. The division of Mecklenburg County along partisan lines in the enacted 2016 plan further illustrates the cracking of CD 9. The most Republican parts of Mecklenburg County were assigned to CD 9 to assure Republican dominance in that district and the most Democratic parts of Mecklenburg County were assigned to CD 12 to assure Democratic dominance in the district. In the 2008 election for Governor, 25.24% of the Mecklenburg County voters assigned to CD 9 voted for the Democratic candidate; by contrast, 56.46% of Mecklenburg County voters assigned to CD 12 voted

for the Democratic candidate. 2008 Election Returns, Part 2, *available at*

http://www.ncleg.net/GIS/Download/District-Plans/DB_2016/Congress

/2016_Contingent_Congressional_Plan_Corrected/Reports/VTD_Statewide

/rptVTDElec2008_2.pdf.

44. Similarly, the cracking of the naturally occurring Democratic cluster in Cumberland, Hoke, and Robeson Counties into CD 8 and CD 9 resulted in the dilution of the voting power of Democratic voters in CD 8, including Plaintiff Coy E. Brewer, Jr., who resided at 909 Calamint Lane, Fayetteville, Cumberland County. Brewer Dep. p. 10:23 – 11:1. CD 8 was constructed using a string of seven counties in a band from Fayetteville in Cumberland County all the way to Salisbury in Rowan County. Five of those seven counties were kept whole (Cabarrus, Stanly, Montgomery, Moore, and Hoke); two were divided (Rowan and Cumberland). To achieve his partisan goal for this district, Thomas Hofeller submerged the strong Democratic vote in Cumberland and Hoke Counties (each of which had vote totals for the 2008 Democratic candidate for Governor in excess of 63%) into the strong Republican vote in Cabarrus, Rowan, Moore, and Stanly Counties, which together accounted for nearly 57% of the district's population. These four counties had the following results for the 2008 Democratic candidate for Governor: Rowan 28.77%, Stanly 31.46%,

31

Cabarrus 34.77%, Moore 39.08%. 2008 Election Returns, Part 2, *available at* http://www.ncleg.net/GIS/Download/District-Plans/DB_2016/Congress/ 2016_Contingent_Congressional_Plan_ Corrected/Reports/VTD_Statewide /rptVTDElec2008_2.pdf. Plaintiff Brewer testified about the harms caused by the dilution of his vote. Brewer Dep. pp. 24:16-24 ("The congressmen representing those districts can rely upon their party's partisan advantage in getting elected, and therefore truly independent voters or voters of the other party tend, in my opinion, to be poorly represented because their views and their potential votes are not fairly considered by the congressmen of either party in these highly partisan districts in making decisions."). Plaintiff Coy E. Brewer, Jr.'s vote was diluted as the result of the dilution of Democratic voters in CD 8 and he has suffered an injury in fact.

(Ex. 3042, P. 7)

45. In the enacted plan, the naturally occurring Democratic cluster in Asheville was split into two different congressional districts, CD 10 and CD 11, each

32

of which had overwhelming Republican majorities in the 2016 general election. As Dr. Hood described in his testimony, the natural clustering of partisans often leads to the placement of such a cluster into a single congressional district. Tr. T. Vol. IV, pp. 44:22-45:1. He admitted that had this occurred with the Asheville Democratic cluster, the partisan composition of the resulting district would have been more Democratic than either CD 6 or CD 13. Tr. T. Vol. IV, pp. 42:6-43:3. Consequently, the cracking of the Asheville partisan cluster in the enacted plan resulted in the dilution of the voting power of Democratic voters in CD 10 and CD 11, including Plaintiff Robert Warren Wolf, who resided at 238 Knollwood Drive, Forest City, Rutherford County, who was placed into CD 10, Wolf Dep. p. 7:22-25, and Plaintiff Jones P. Byrd, who resided at 89 Edgelawn Drive, Asheville, Buncombe County, who was placed into CD 11. Byrd Dep. pp. 19:22 – 20:2. Plaintiff Byrd testified that as a Democrat, there is no candidate for whom he can vote that would be elected and his vote does not really mean anything. Byrd Dep. p. 27:2-4. Mr. Byrd also testified how the mapdrawer split the population center of Asheville to take the Democratic population out of CD 11 and into CD 10 to dilute the Democratic vote in both districts. Byrd Dep. pp. 31:10 – 32:18. These plaintiffs have therefore suffered an injury in fact.

33