IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
NO. 1:15-CV-00399

SANDRA LITTLE COVINGTON, *et al.*, Plaintiffs, v. THE STATE OF NORTH CAROLINA, *et al.*, Defendants.	)	**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO STAY, DEFER, OR ABSTAIN**

Defendants submit this Memorandum of Law in support of their Motion to Stay, Defer, or Abstain from further proceedings in this action because parallel litigation involving the same claims and issues is currently pending before the North Carolina Supreme Court. In support of their motion, Defendants show the Court:

I. STATEMENT OF FACTS

A. Summary of the pending state court proceedings regarding the same North Carolina House and Senate plans challenged in this action.

1. The enactment and preclearance of the challenged districts by the United States Department of Justice.

On July 27-28, 2011, the North Carolina General Assembly ("General Assembly") enacted three new redistricting plans for the North Carolina House of Representatives ("State House"), North Carolina Senate ("State Senate"), and the United States House of Representatives ("Congress"). *See* S.L. 2011-404 (State House); S.L. 2011-402 (State Senate); and S.L. 2011-403 (Congress); (Judgment and Memorandum Decision of Three-Judge State Court in *Dickson et al* v. *Rucho et al*, Nos 11 CVS 16896 and 11 CVS 16940

[Wake County Superior Court July 8, 2013]) ("*Dickson* Judgment") (attached as Exhibit 1). On November 1, 2011, all three redistricting plans were precleared by the United States Department of Justice under Section 5 of the Voting Rights Act ("VRA"), 42 USC § 1973c. (*See* Ex. 1.)

2. Two groups of state court plaintiffs represented by the same lawyers in this case filed challenges to the North Carolina House and Senate District plans using the same legal theory advanced by the plaintiffs in this case.

Two separate groups of plaintiffs filed lawsuits on November 3 and 4, 2011 challenging the constitutionality of specific districts in all three plans, including most of the North Carolina House and Senate Districts challenged in this action.[1] One set of plaintiffs (referred to collectively as the "NAACP Plaintiffs") includes the North Carolina State Conference of Branches of the NAACP ("NC NAACP"), the League of Women Voters of North Carolina ("LWV NC"), Democracy North Carolina ("Democracy NC"), the A. Philip Randolph Institute ("Randolph Institute") and forty six individual plaintiffs. (A copy of the NC NAACP Plaintiffs' Amended Complaint is attached as Exhibit 2). Like the Plaintiffs here, the NAACP Plaintiffs are represented by Anita Earls and Allison Riggs of the Southern Coalition for Social Justice and Adam Stein of Tim Fulton Walker & Owen, PLLC.

The other set of plaintiffs (referred to collectively as the "Dickson Plaintiffs") includes 56 individual plaintiffs. (A copy of the Dickson Plaintiffs' Amended Complaint

[1] With the exception of three North Carolina House Districts challenged here—House Districts 43, 58, and 60—all of the districts challenged in this case were also challenged by the *Dickson* plaintiffs.

attached as Exhibit 3). The Dickson Plaintiffs are represented by Edwin Speas, Jr., John O'Hale, and Caroline Mackey, the same lawyers from Poyner Spruill, LLP who also represent the Plaintiffs in this action. The three-judge state court consolidated the cases on December 19, 2011. (*Dickson* Judgment at 8). The consolidated cases are hereinafter referred to collectively as "*Dickson.*"

In challenging the North Carolina House and Senate Districts at issue here, both groups of plaintiffs in *Dickson* alleged, *inter alia*, that: (1) race was the predominant factor used by the General Assembly to draw the challenged districts, (2) none of the districts at issue were sufficiently compact, and (3) none of the districts at issue were narrowly tailored to comply with the requirements of the VRA. (NC NAACP Am. Compl. ¶¶ 124-383; *Dickson* Am. Compl. ¶¶ 110-366). Both sets of plaintiffs in *Dickson* asked the state court to declare the challenged districts unconstitutional under the Fourteenth Amendment of the United States Constitution. (NC NAACP Am. Compl. ¶¶ 464-79; *Dickson* Am. Compl. ¶¶ 505-14).

3. After reviewing an extensive record and a trial on the merits, a three-judge state court panel dismissed racial gerrymander claims identical to those brought by the Plaintiffs here.

A panel of three North Carolina Superior Court judges from "different geographic regions and with differing ideological and political outlooks" reviewed a voluminous record of maps, affidavits, depositions, statistics, testimony and other evidence in *Dickson*. (*Dickson* Judgment at 8). During the week of February 25, 2013, the *Dickson* trial court conducted hearings on cross-motions for summary judgment filed by the

parties. Prior to ruling on these motions, on May 13, 2013, the trial court ordered that a trial be held on only two issues:

> (A) "Assuming application of a strict scrutiny standard and, in considering whether the Enacted Plans were narrowly tailored, was each challenged Voting Rights Act ("VRA") district drawn in a place where a remedy or potential remedy for racially polarized voting was reasonable for purposes of preclearance or protection of the State from vote dilution claims under the Constitution or under § 2 of the VRA" and;
>
> (B) "For six specific districts (Senate Districts 31 and 32, House Districts 51 and 54 and Congressional Districts 4 and 12 – none of which is identified as a VRA district), what was the predominant factor in the drawing of these districts."

(*Dickson* Judgment at 7 & n.6).

The trial court found that plaintiffs had challenged a total of thirty districts (9 Senate, 18 House, and 3 Congressional) on the grounds of racial gerrymandering. (*Dickson* Judgment at 14). Twenty-six of these districts were created by North Carolina for the purpose of avoiding VRA claims. The trial court found that four other districts challenged by plaintiffs were not created by North Carolina for that purpose. (*Id.*)

The three-judge panel conducted the trial assuming the applicability of strict scrutiny but never held a trial on the issue whether race was the predominant motive for the location of the challenged VRA legislative district lines. Instead, the trial court summarily found that North Carolina's 2011 VRA districts were subject to strict scrutiny. The sole basis for this ruling was the statement by the Co-Chairs of the Joint Redistricting Committee that substantial proportionality was one of the factors they would consider in legislative redistricting (even though neither plan maximized the

number of majority-black districts or established the proportional number of majority-black districts). (*Id.*) The trial court gave no reasoning in support of its decision to subject the 2011 First Congressional District to strict scrutiny.[2] Applying the test articulated by the Supreme Court in *Shaw v. Hunt ("Shaw II")*, 517 U.S. 899, 908-10 (1996), the three-judge panel then upheld all of the challenged VRA districts as having a strong basis in the legislative record. (*Dickson* Judgment at 16-44).

Based upon the evidence presented at trial, the three-judge panel entered extensive findings of fact supporting its conclusion that the challenged VRA districts survived strict scrutiny. These included general findings applicable to all of the challenged districts (*id.* at App. A-76 – App. A-92) as well as detailed findings related to each challenged VRA district. (*Id*. at App. A-92 – App. A-159). The trial court also held that plaintiffs had failed to provide a judicially manageable definition of the term "compact" or prove that districts they supported were any more "geographically compact" or "better looking" than the enacted districts. The trial court concluded that plaintiffs had therefore failed to prove that the enacted districts violated any "compactness" requirement under federal or state law. (*Id*. at 57-67).

[2] The trial court acknowledged that "a persuasive argument can be made that compliance with the VRA [was] but one of several competing redistricting criteria balanced by the General Assembly and that a lesser standard of review might be appropriate." (*Dickson* Judgment at 15-16) (citing *Vera v. Bush*, 517 U.S. 952, 958 (1996); *Wilkins v. West*, 264 Va. 447, 571 S.E.2d 100 (2002)). Despite these arguments, the trial court elected to apply strict scrutiny to the challenged VRA districts because "if the Enacted Plans are found to be lawful under a strict scrutiny standard of review, and the evidence considered in a light most favorable to the Plaintiffs, then, *a fortiori*, the Enacted Plans would necessarily withstand review, and therefore be lawful, if a lesser standard of review is indeed warranted . . . ." (*Id*. at 16).

The three-judge panel also concluded that race was not the predominant motive for the location of district lines established for Senate District 32, House District 54, and Congressional Districts 4 and 12 (*Dickson* Judgment at 46-49) and entered extensive findings of fact in support of this conclusion. (*Dickson* Judgment, App. B, Findings of Fact 179-221). The trial court granted summary judgment to the defendants on all of plaintiffs' other claims, including their contention that the 2011 Senate and House Plans failed to comply with the Whole County Provision of the North Carolina Constitution. (*Dickson* Judgment at 49-57).

4. The North Carolina Supreme Court affirmed the three-judge state court panel's dismissal of the *Dickson* plaintiffs' racial gerrymander claims.

Following the unanimous ruling of the three-judge panel, the *Dickson* plaintiffs filed a notice of appeal to the North Carolina Supreme Court. On December 19, 2014, the North Carolina Supreme Court issued an opinion affirming the unanimous judgment of the three-judge panel in favor of the defendants in *Dickson.* The court specifically affirmed the trial court's decision to grant summary judgment to the State on the issues of whether the enacted Senate and House Plans complied with the county-grouping formula in *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002) ("*Stephenson I*") and *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) ("*Stephenson II*") and found that the *Dickson* plaintiffs' alternative Senate and House plans did not. *Dickson*, 367 N.C. at 565-66, 766 S.E.2d at 254-55. The North Carolina Supreme Court also held that the trial court erred by applying strict scrutiny to the challenged VRA districts because summary resolution of the racial predominance element in favor of the plaintiffs is almost

never appropriate. *Id.* at 551-54, 766 S.E. 2d at 246-47. However, the Court found this error to be harmless based upon its decision to affirm the trial court's findings that the challenged VRA districts survived strict scrutiny. *Id.* This Court also affirmed the trial court's conclusion that race was not the predominant motive for the location of the district lines of Senate District 32, House District 54, and Congressional Districts 4 and 12. *Id.* at 569-70, 766 S.E. 2d at 256-57.

On January 16, 2015, the plaintiffs in *Dickson* filed a petition for writ of *certiorari* with the Supreme Court that was granted on April 20, 2015. In granting plaintiffs' petition for writ of *certiorari*, the Supreme Court vacated the North Carolina Supreme Court's judgment, and remanded *Dickson* to the North Carolina Supreme Court for further consideration in light of the decision in *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. __ (2015) which was handed down on March 25, 2015, three months after the North Carolina Supreme Court's ruling.

In remanding *Dickson* to the North Carolina Supreme Court, the Supreme Court expressed no opinion regarding whether the North Carolina Supreme Court's ruling was correct in light of its *Alabama* decision or whether any of the districts challenged by the plaintiffs in *Dickson* were unconstitutional. *Alabama* involved an appeal from a decision by a three-judge federal district court dismissing a challenge to legislative districts enacted by the State of Alabama. *Alabama Legislative Black Caucus v. Alabama*, 989 F. Supp. 2d 1227 (M.D. Ala. 2013). The Supreme Court vacated the decision by that three-judge court and remanded the case for further proceedings consistent with its opinion.

The Supreme Court did not declare any of the Alabama districts illegal or unconstitutional. As will be discussed in Defendants' Response in Opposition to Plaintiffs' Motion for a Preliminary Injunction, the Supreme Court's holding in *Alabama* does not conflict in any respect with the North Carolina Supreme Court's prior ruling in *Dickson*. As a result, the defendants in *Dickson* have urged the North Carolina Supreme Court to once again reject the claims of the plaintiffs in *Dickson* and to affirm the constitutionality of the challenged districts.

B. Plaintiffs' claims in this action are identical to those of the plaintiffs in *Dickson.*

Plaintiffs filed this action in May 2015, five months after the North Carolina Supreme Court affirmed the decision of the three-judge panel in *Dickson* dismissing racial gerrymander claims identical to those at issue here. Here, Plaintiffs allege that they are challenging the constitutionality of nine North Carolina Senate districts and 19 North Carolina House Districts "as racial gerrymanders in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution." (D.E. 11) (First Am. Compl. ¶ 1). Plaintiffs contend that challenged districts "are the product of two race-based policies adopted by the leaders of the General Assembly… (1) a policy of racial proportionality for both the Senate and House plans and (2) a policy that each district drawn to achieve racial proportionality should encompass within its borders at least an absolute majority of the total black voting age population (">50% TBVAP")." (*Id*. at ¶ 3). Plaintiffs allege that "traditional districting principles were plainly subjugated to race, resulting in bizarrely shaped and highly non-compact districts." (*Id*.

at ¶ 6). Plaintiffs further contend that the challenged districts were not "reasonably necessary" to comply with the VRA "properly interpreted" and are asking this Court to enjoin their future use. (*Id.* at ¶¶ 5, 254-59).

II. QUESTIONS PRESENTED

1. Should this Court should stay or defer further proceedings in this action pending resolution of the identical state court claims brought by the plaintiffs in the *Dickson v. Rucho*?

2. May the Court properly abstain from further action in this case under the United States Supreme Court's decision in *Younger v. Harris*?

III. ARGUMENT

A. This Court should stay or defer further proceedings in this action until the identical state court claims by the *Dickson* plaintiffs are resolved.

1. There is no need or legal basis for this Court to "rescue" the redistricting process in North Carolina given the pending *Dickson* litigation.

The primacy of state judiciaries in redistricting disputes has been repeatedly recognized by the Supreme Court. *See Scott v. Germano*, 381 U.S. 407 (1965); *Chapman v. Meier*, 420 U.S. 1, 27 (1975); *Growe v. Emison*, 507 U.S. 25, 34 (1993). In *Germano*, the Court observed that "the power of the judiciary of a state to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the states in such cases has been specifically encouraged." 381 U.S. at 409; *see also Chapman*, 420 U.S. at 27 ("We say once again what has been said on many occasions: reapportionment is primarily the duty and

responsibility of the State through its legislature or other body, rather than of a federal court.") Moreover, the Court has held that "[a]bsent evidence that these state branches will fail timely to perform that duty, a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it." *Growe*, 507 U.S. at 34. Although "i[n] other contexts, a federal court's decision to decline to exercise jurisdiction is disfavored and thus exceptional . . . in the reapportionment context, when parallel State proceedings exist, the decision to refrain from hearing the litigant's claims should be the routine course." *Rice v. Smith*, 988 F. Supp. 1437, 1439 (M.D. Ala. 1997) (citations omitted). In *Rice*, as here, a state court found the challenged redistricting plans valid and plaintiffs' claims without merit. *Id.* at 1438. The *Rice* court applied *Growe* to "stay [its] hand" as to similar claims by a different set of plaintiffs known as the "Thompson plaintiffs." *Id.* at 1440. The court recognized the teaching from *Growe* that, absent evidence the state was abdicating its redistricting duty, "a federal court should not interject itself into the State's matter." *Id.* So long as the state court "is willing or able to hear [the plaintiffs' redistricting] claims," then the federal court should at the least defer consideration of the claims until the state court has been allowed to consider them. Otherwise, the federal courts may be used to "impede" or "obstruct" the state process. *Growe*, 507 U.S. at 34.

Where the state courts have taken on the "highly political" task of considering redistricting, the federal court's role is as a "last-minute federal court rescue of" the state electoral process. It is decidedly not a "race to beat [the state court process] to the finish line." *Growe*, 507 U.S. at 37. The North Carolina state courts began the task of

considering North Carolina redistricting over four years ago when *Dickson* was filed. The state trial court entered a judgment upholding the plans in July 2013. It was only after this judgment in favor of the state and the affirmance of this judgment by the North Carolina Supreme Court that the plaintiffs in this case, represented the same lawyers who represented the plaintiffs in the *Dickson* case, filed this action.

Nothing in the current circumstances indicates a need for this Court to "rescue" the North Carolina electoral process. A three-judge panel of the Superior Court of Wake County has upheld the legality of the North Carolina House and Senate plans under both state and federal law. The North Carolina Supreme Court has done the same. Following remand by the Supreme Court for additional consideration in light of *Alabama*, the North Carolina Supreme Court expedited the briefing and oral argument schedule. There is no reason to believe that the North Carolina Supreme Court will not promptly exercise its obligation to render an opinion on the districts at issue here.

2. *Germano* and *Growe* require this Court to stay all proceedings in this action pending final disposition of the identical claims raised by the same lawyers in *Dickson.*

The requirements of *Germano* and *Growe* are clear: where a state court has "begun to address" a redistricting dispute, a federal court should "stay its hand" and defer consideration of any parallel redistricting challenge filed in federal court. This argument applies with even greater force in this case where the same lawyers elected to first pursue relief in state court and only sought relief in federal court after losing in state court. Because the same claims raised by Plaintiffs in this action have already been addressed in *Dickson* by a three-judge state court panel and are currently pending on remand before

the North Carolina Supreme Court, this Court should stay or defer further proceedings in this matter until *Dickson* has been fully resolved.

The grounds for abstention or deferral in this matter until *Dickson* is fully resolved are even stronger than those in *Growe* because the Plaintiffs' counsel and Plaintiffs here have raised the same claims with respect to the North Carolina House and Senate districts here as those currently before the North Carolina Supreme Court on remand. In addition, determining whether any of the districts challenged here are illegal racial gerrymanders involves analyzing whether they comply with state law requirements that impact the shapes, lines, and compactness of each district including Whole County Provision of the North Carolina Constitution and the county grouping formula found in *Stephenson I and II*.

After the North Carolina Supreme Court issues its decision, any aggrieved party in *Dickson* will again have the right to appeal to the Supreme Court. Should this occur, and if the Supreme Court decides to hear the case, its decision would be binding on this Court. Thus, piecemeal litigation could result if this Court moves forward with a trial in this matter before *Dickson* is resolved.

3. The potential applicability of the doctrines of *res judicata* and collateral estoppel further support deferral of consideration of this matter until the *Dickson* proceedings have been finalized.

Another reason for the Court to defer further proceedings in this matter is that one or more of the Plaintiffs in this action may be bound by the judgment in *Dickson* under the doctrines of *res judicata* (claim preclusion) or collateral estoppel (issue preclusion). In addition to the fact that Plaintiffs' claims in this action involve the same claims and

issues with respect to the challenged North Carolina House and Senate districts that were decided in *Dickson* by the three-judge state court and that are now before the North Carolina Supreme Court, Defendants may be able to show, following discovery, that the interests of the plaintiffs in this litigation were aligned with and represented by the plaintiffs in *Dickson*, particularly if any of the Plaintiffs here are members of any of organizations that are plaintiffs in *Dickson*. *See Warth v. Selden*, 422 U.S. 490, 511 (1975) (noting that an "association may be an appropriate representative of its members"). Indeed, all of the individual and organization plaintiffs in *Dickson* alleged in their respective complaints that they had suffered "representational harms" including "impediments to their missions, activities, and interests" and "their ability to participate equally in the political process" as a result of the challenged districts. (Ex. 2, ¶¶ 421, 434; Ex. 3, ¶¶ 471. 479).

Deferral is further warranted in light of the possibility that the Supreme Court may render a decision that is binding on this Court on one or more of the claims or issues in this litigation. And, even if it does not, knowing the outcome of *Dickson* is essential to a fair and efficient resolution of the Plaintiffs' claims here because one or more of the claims in this action may be barred by the doctrines of *res judicata* or collateral estoppel if the plaintiffs in *Dickson* adequately represented the interests of the Plaintiffs here.

B. This Court may also properly abstain from further action in this case under the Supreme Court's decision in *Younger v. Harris.*

In addition to the reasons outlined in *Germano* and *Growe,* this Court may abstain from further proceedings in this matter under the United States Supreme Court's decision

in *Younger v. Harris*, 401 U.S. 37 (1971). Abstention is proper in a civil action under *Younger* where three conditions are met: (1) there is an "ongoing judicial proceeding" in a state court; (2) the ongoing proceedings implicate "important state interests"; and (3) there is an "adequate opportunity in the state proceedings to raise constitutional challenges." *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982).

This three-part test is met here. As established above, *Dickson* involves the same claims and issues with respect to the North Carolina House and Senate districts challenged in this action. Second, the Supreme Court, along with other federal courts, has repeatedly recognized that redistricting involves "important state interests." *See Germano*, 381 U.S. at 409; *Chapman*, 420 U.S. at 27; *Growe*, 507 U.S. at 34; *see also Miller v. Johnson*, 515 U.S. 900, 915 (1995) ("Federal-court review of districting legislation represents a serious intrusion on the most vital of local functions."). This is especially so with respect to the North Carolina House and Senate districts at issue here where application of the *Stephenson* criteria and Whole County Provision impacted the shapes and lines of the challenged districts.[3] Finally, the same constitutional challenges to the North Carolina House and Senate districts that Plaintiffs seek to raise here have already been raised in *Dickson* by the same counsel representing the Plaintiffs in this

[3] The presence of these state law criteria and the fact that state law is intertwined with the federal issues raised by the Plaintiff here distinguishes this case from *Harris v. McCrory*, Civil Action No. 1:13-cv-949 (M.D.N.C.) in which the three-judge panel denied without prejudice Defendants' motion to stay, defer, or abstain. (*See* D.E. 65) (filed May 22, 2014). These criteria were not a factor in the drawing of the congressional districts that were at issue in *Harris*.

action. Accordingly, Plaintiffs cannot contend that there has been no opportunity to raise constitutional challenges with respect to these districts in *Dickson.*

While *Younger* is most frequently applied in criminal proceedings, the Supreme Court has held that the *Younger* doctrine can also apply to "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." *Sprint Commc's v. Jacobs*, 134 S.Ct. 584, 588 (2013); *see also S.C. Ass'n of School Adm'rs v. Disabato*, 460 Fed. App'x 239, 240 (4th Cir. 2012) (finding that "the district court did not abuse its discretion in determining that abstention in favor of an earlier-filed state suit was appropriate under *Younger*" in case where a party later challenged the constitutionality of a state public records law in federal court).

Even though the Plaintiffs in this case are nominally different from those in *Dickson*, this Court may still abstain from this action under *Younger. See, e.g., Hicks v. Miranda,* 422 U.S. 332, 348 (1975) (finding federal district court should have abstained under *Younger* from a federal lawsuit brought by owners of a movie theater where employees of theater were charged with violating state obscenity laws on grounds that the owners' "interests and those of their employees were intertwined"); *S.P. ex rel. Parks v. Native Vill. Of Minto*, 443 Fed. App'x 264, 265-66 (9th Cir 2011) ("Although the federal and state cases involve different parties and initially appear to implicate different issues, the federal questions presented in this case are unquestionably intertwined with the questions posed in the state case. . . .[A] decision on the merits by a federal court . . . would prevent the state court from reaching different legal conclusions. Thus, the district court's decision to abstain under *Younger* was appropriate."); *Citizens for a Strong Ohio*

v. Marsh, 123 Fed. App'x 630, 636-37 (6th Cir. 2005) (rejecting argument that *Younger* abstention does not apply to parties who are not subject to pending state court proceedings and affirming dismissal of three parties to federal lawsuit who were not parties to pending state administrative action involving the same issues); *Spargo v. N.Y. State Comm'n on Judicial Conduct*, 351 F.3d 65, 84 (2d Cir. 2003) (finding that legal interests of a judge and his political supporters who were plaintiffs in federal lawsuit were "sufficiently intertwined" and that circumstances presented in case where such that *Younger* could "bar claims of third-parties who are not directly involved in the pending state action"); *Cedar Rapids Cellular Tel., L.P. v. Miller*, 280 F.3d 874, 881-82 (8th Cir. 2002) (finding that, under *Younger*, "the parties in federal and state court need not be identical where the interests of the parties seeking relief in federal court are closely related to those of [the] parties in pending state proceedings and where the federal action seeks to interfere with pending state proceedings").

Plaintiffs' interests in this action are clearly "intertwined" with those of the plaintiffs in *Dickson*. The plaintiffs in both cases share the same ultimate goals of having a court: (1) declare that the challenged North Carolina House and Senate Districts violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; (2) enjoin the further use of these districts; and (3) order the state to adopt a new redistricting plan. (*Compare* D.E. 11, pp. 92-93 [Prayer for Relief] *with* Prayers for Relief in attached Exs. 2 and 3.) Unlike in other contexts, if the relief sought by the plaintiffs in *Dickson* is ultimately granted, then the Plaintiffs here will receive the same "relief" as the plaintiffs in *Dickson*. In other words, the decision in *Dickson* will have the

same impact on the Plaintiffs here as it does the plaintiffs in *Dickson* and all other residents of the challenged districts. Given the significant state interests at issue here, the relief Plaintiffs seek here, if granted, would directly interfere with *Dickson* because North Carolina can only have one set of legislative districts and a federal injunction would interfere with the "state courts' ability to perform their judicial functions" and create an "undue interference" with the state proceeding. *See Jacobs*, 134 S.Ct. at 586; s*ee also Growe*, 507 U.S. at 35 (noting that a state "can have only one set of legislative districts"). Accordingly, this Court may properly abstain from this action under *Younger*.

IV. CONCLUSION

For the foregoing reasons, the Court should stay, defer, or abstain from further proceedings in this matter until there is a final resolution of the same claims and issues in *Dickson*.

This the 9th day of November, 2015.

NORTH CAROLINA DEPARTMENT OF JUSTICE

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CERTIFICATE OF SERVICE

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing **Memorandum of Law in Support of Defendant's Motion to Stay, Defer, or Abstain** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

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This the 9th day of November, 2015.

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