

No. 413PA21

No. 413PA21

TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

NORTH CAROLINA LEAGUE OF)
CONSERVATION VOTERS, INC., et al.,)
Plaintiffs-Appellants,)
)
REBECCA HARPER, et al.,)
Plaintiffs-Appellants, and)
)
COMMON CAUSE,)
Plaintiff-Intervenor-Appellant,)
)
v.)
)
REPRESENTATIVE DESTIN HALL, in his)
official capacity as Chair of the House)
Standing Committee on Redistricting, et al.,)
)
Defendants-)
Appellees.)
)
)
)
)
)
)
)
)
)

From Wake County
21 CVS 015426
21 CVS 500085

PRINTED RECORD ON APPEAL

INDEX

Statement of Organization of Trial Court	1
Statement of Jurisdiction	3
NCLCV Plaintiffs' Civil Summonses (filed 16 November 2021)	4
Verified Complaint of NCLCV Plaintiffs (filed 16 November 2021)	30
NCLCV Plaintiffs' Motion for Preliminary Injunction (filed 16 November 2021)	123
<i>Harper</i> Plaintiffs' Complaint (filed 18 November 2021)	128
Order Appointing Three-Judge Panel (served 19 November 2021)	177
NCLCV Plaintiffs' Affidavit of Service (filed 22 November 2021)	178
<i>Harper</i> Plaintiffs' Affidavit of Service (filed 23 November 2021)	194
<i>Harper</i> Plaintiffs' Motion for Preliminary Injunction (filed 30 November 2021)	208
NCLCV Plaintiffs' Brief in Support of Motion for Preliminary Injunction (served 1 December 2021)	546
Legislative Defendants' Opposition to Plaintiffs' Motions for Preliminary Injunction (served 2 December 2021).....	614
State Board Defendants' Response to Plaintiffs' Motion for Preliminary Injunction (served 2 December 2021)	842

Notice of Filing of Affidavit of Karen Brinson Bell (2 December 2021)	853
Consolidation Order (filed 3 December 2021)	867
Order on Plaintiffs' Motions for Preliminary Injunction (filed 3 December 2021).....	871
<i>Harper</i> Plaintiffs' Notice of Appeal (filed 3 December 2021).....	885
NCLCV Plaintiffs' Notice of Appeal (filed 3 December 2021).....	888
Order of the Supreme Court of North Carolina (filed 8 December 2021)	891
<i>Harper</i> Plaintiffs' Amended Complaint (filed 12 December 2021).....	897
Common Cause Motion to Intervene As Plaintiffs & to Expedite Consideration of Same (filed 13 December 2021)	965
Case Scheduling Order (filed 13 December 2021)	1069
Legislative Defendants' Motion to Compel (filed 14 December 2021).....	1079
<i>Harper</i> Plaintiffs' Opposition to Legislative Defendants' Motion to Compel (served 15 December 2021).....	1182
NCLCV Plaintiffs' Opposition to Motion to Compel (served 15 December 2021).....	1188
Order on Common Cause Motion to Intervene (filed 15 December 2021)	1232
Order on Legislative Defendants' Motion to Compel (filed 15 December 2021)	1240

Protective Order (filed 15 December 2021)	1249
Verified Complaint of Common Cause (filed 16 December 2021).....	1263
Legislative Defendants’ Motion for Partial Reconsideration of December 15 Order (filed 16 December 2021).....	1347
Legislative Defendants’ Answer to <i>Harper</i> Plaintiffs’ Amended Complaint (filed 17 December 2021).....	1356
Legislative Defendants’ Answer to NCLCV Plaintiffs’ Verified Complaint (filed 17 December 2021).....	1383
NCLCV Plaintiffs’ Opposition to Motion for Partial Reconsideration (served 17 December 2021).....	1414
Order re Proposed Findings of Fact & Conclusions of Law (filed 17 December 2021).....	1427
State Defendants’ Answer to <i>Harper</i> Plaintiffs’ Amended Complaint (filed 20 December 2021).....	1430
State Defendants’ Answer to NCLCV Plaintiffs’ Verified Complaint (filed 20 December 2021)	1464
Order Granting in Part Legislative Defendants’ Motion for Partial Reconsideration & Order Clarifying Case Scheduling Order (filed 20 December 2021).....	1503
Legislative Defendants’ Motion for Protective Order Quashing Notices of Deposition of President Pro Tempore Philip E. Berger, Senator Warren Daniel, Senator Paul Newton & Speaker Timothy K. Moore (filed 22 December 2021).....	1509

<i>Harper</i> Plaintiffs’ Response to Legislative Defendants’ Motion for Protective Order (served 23 December 2021).....	1552
Order on Legislative Defendants’ Motion for Protective Order (filed 24 December 2021)	1630
<i>Harper</i> Plaintiffs’ Motion to Compel Responses to Second Set of Interrogatories & First Set of Requests for Production (filed 27 December 2021)	1636
Legislative Defendants’ Response to <i>Harper</i> Plaintiffs’ Motion to Compel Responses to Second Set of Interrogatories & First Set of Requests for Production (served 27 December 2021)	1661
Order on <i>Harper</i> Plaintiffs’ Motion to Compel Responses to Second Set of Interrogatories & First Set of Requests for Production (filed 27 December 2021).....	1672
<i>Harper</i> Plaintiffs’ Motion to Compel Adequate Responses to Second Set of Interrogatories & First Set of Requests for Production & for Other Appropriate Relief (filed 28 December 2021)	1679
Legislative Defendants’ Response to <i>Harper</i> Plaintiffs’ Second Motion to Compel Responses to Second Set of Interrogatories & First Set of Requests for Production (served 29 December 2021)	2030
NCLCV Plaintiffs’ Motion for Protective Order Quashing Notice of Deposition to NCLCV Counsel of Record Sam Hirsch & Directing Legislative Defendants to Strike Sam Hirsch from Their Witness List for Trial (filed 29 December 2021).....	2043

Legislative Defendants’ Response in Opposition to NCLCV Plaintiffs’ Motion for Protective Order Quashing Notice of Deposition to NCLCV Counsel of Record Sam Hirsch & Directing Legislative Defendants to Strike Sam Hirsch from Their Witness List for Trial (served 29 December 2021).....	2106
Legislative Defendants’ Motion for Clarification, and in the Alternative, Motion to Compel (filed 29 December 2021).....	2114
Legislative Defendants’ Motion to Seal Their Motion for Clarification, and in the Alternative, Motion to Compel (filed 29 December 2021)	2133
NCLCV Plaintiffs’ Opposition to Legislative Defendants’ Motion to Clarify or in the Alternative to Compel (served 29 December 2021)	2141
NCLCV Plaintiffs’ Response to Legislative Defendants’ Motion to Seal (served 29 December 2021).....	2157
Common Cause & Harper Plaintiffs’ Joint Motion to Strike Sean P. Trende Affidavit (filed 29 December 2021).....	2163
Order on <i>Harper</i> Plaintiffs’ Motion to Compel Adequate Responses to Second Set of Interrogatories & First Set of Requests of Production (filed 29 December 2021).....	2171
Order on (1) NCLCV Plaintiffs’ Motion for Protective Order, (2) Legislative Defendants’ Motion for Clarification, and (3) Legislative Defendants’ Motion to Seal (filed 30 December 2021)	2180

Legislative Defendants’ Response to Motion to Strike Sean P. Trende Affidavit (served 30 December 2021).....	2192
Common Cause & <i>Harper</i> Plaintiffs’ Joint Motion for Discovery Sanctions (served 31 December 2021)	2234
Legislative Defendants’ Response in Opposition to Plaintiffs’ Joint Motion for Discovery Sanctions (served 31 December 2021).....	2286
NCLCV Plaintiffs’ Notice That Attorney Sam Hirsch Will not Act as an Advocate at Trial (served 1 January 2022)	2297
Legislative Defendants’ Motion to Strike Portions of Dr. Moon Duchin’s Rebuttal Report (filed 3 January 2022)	2303
Expert Report of Dr. Jowei Chen (admitted 3 January 2022 as PX482).....	2338
Expert Report of Dr. Christopher Cooper (admitted 3 January 2022 as PX425)	2433
Expert Report of Dr. Jonathan Mattingly (admitted 3 January 2022 as PX629)	2564
Rebuttal Report of Dr. Jonathan Mattingly (admitted 3 January 2022 as PX671)	2670
NCLCV Plaintiffs’ Opposition to Legislative Defendants’ Motion to Strike Portions of Dr. Moon Duchin’s Rebuttal Report (served 4 January 2022)	2689
Order on Plaintiffs’ Joint Motion for Discovery Sanctions (filed 4 January 2022)	2699
Order on Plaintiffs’ Motion to Strike Sean P. Trende Affidavit (filed 4 January 2022)	2706

Order on Legislative Defendants’ Motion to Strike Portions of Dr. Moon Duchin’s Rebuttal Report (filed 4 January 2022).....	2711
Expert Report of Dr. Moon Duchin (admitted 4 January 2022 as PX150).....	2716
Rebuttal Report of Dr. Moon Duchin (admitted 4 January 2022 as PX234).....	2744
Rebuttal Report of Dr. Moon Duchin Appendix A (admitted 4 January 2022 as PX235)	2754
Expert Report of Dr. Daniel B. Magleby (admitted 4 January 2022 as PX1483).....	2756
Rebuttal Report of Dr. Daniel B. Magleby (admitted 4 January 2022 as PX1618)	2785
Expert Report of Dr. Wesley Pegden (admitted 4 January 2022 as PX523).....	2799
Rebuttal Report of Dr. Wesley Pegden (admitted 4 January 2022 as PX602).....	2858
Expert Report of Dr. Michael Barber (admitted 5 January 2022 as LDTX107)	2872
Rebuttal Report of Dr. Michael Barber (admitted 5 January 2022 as LDTX110)	3150
Expert Report of Dr. James L. Leloudis II (admitted 5 January 2022 as PX1486)	3203
Rebuttal Report of Dr. Jeffrey B. Lewis (admitted 5 January 2022 as LDTX109)	3302
Addendum of Dr. Jonathan Mattingly (admitted 5 January 2022 as PX1485).....	3369
Expert Report of Dr. Andrew J. Taylor (admitted 5 January 2022 as LDTX108)	3371

Rebuttal Report of Sean P. Trende (admitted 5 January 2022 as LDTX111)	3440
State Defendants’ Motion to Stay Candidate Challenges (filed 11 January 2022)	3463
Order on State Board’s Motion to Stay Candidate Challenges (filed 11 January 2022)	3507
Judgment (filed 11 January 2022)	3512
NCLCV Plaintiffs’ Notice of Appeal (filed 11 January 2022)	3772
Common Cause Notice of Appeal (filed 12 January 2022)	3776
<i>Harper</i> Plaintiffs’ Notice of Appeal (filed 12 January 2022)	3780
Orders on Pro Hac Vice Motions	3784
Statement of Transcript Option	3794
Statement of Rule 9(d) Exhibits	3796
Stipulation Settling Record on Appeal	3797
NCLCV Plaintiffs’ Proposed Issues on Appeal	3800
<i>Harper</i> Plaintiffs’ Proposed Issues on Appeal	3801
Common Cause’s Proposed Issues on Appeal	3802
Identification of Counsel for the Appeal	3803
Certificate of Service	3809

STATEMENT OF ORGANIZATION OF TRIAL COURT

Plaintiffs-Appellants in this matter are:

- NCLCV Plaintiffs, comprising Plaintiffs North Carolina League of Conservation Voters, Inc., Henry M. Michaux, Jr., Dandrielle Lewis, Timothy Chartier, Talia Fernós, Katherine Newhall, R. Jason Parsley, Edna Scott, Roberta Scott, Yvette Roberts, Jereann King Johnson, Reverend Reginald Wells, Yarbrough Williams, Jr., Reverend Deloris L. Jerman, Viola Ryals Figueroa, and Cosmos George;
- *Harper* Plaintiffs, comprising Plaintiffs Rebecca Harper, Amy Clare Oseroff, Donald Rumph, John Anthony Balla, Richard R. Crews, Lily Nicole Quick, Gettys Cohen Jr., Shawn Rush, Mark S. Peters, Kathleen Barnes, Virginia Walters Brien, David Dwight Brown, Eileen Stephens, Barbara Proffitt, Mary Elizabeth Voss, Chenita Barber Johnson, Sarah Taber, Joshua Perry Brown, Laureen Flood, Donald M. Mackinnon, Ron Osborne, Anne Butzner, Sondra Stein, Bobby Jones, and Kristiann Herring; and
- Plaintiff-Intervenor Common Cause.

Plaintiffs-Appellants appeal from the judgment of the Superior Court, Wake County, in favor of Defendants in Superior Court Nos. 21 CVS 015426, 21

CVS 500085. The judgment was rendered on 11 January 2022, pursuant to this Court's 8 December 2021 Order, by a three-judge panel convened under N.C.G.S. § 1-267.1 comprising the Honorable A. Graham Shirley, the Honorable Nathaniel J. Poovey, and the Honorable Dawn M. Layton. Exercising their option to appeal directly to this Court under its 8 December 2021 Order, NCLCV Plaintiffs timely filed and served a written notice of appeal on 11 January 2022. Harper Plaintiffs and Common Cause each timely filed and served written notices of appeal on 12 January 2022. This record on appeal was filed in the Supreme Court of North Carolina on 21 January 2022 pursuant to this Court's 14 January 2022 Expedited Briefing Order.

STATEMENT OF JURISDICTION

Action 21 CVS 015426 was commenced by the filing of a complaint and issuance of summonses in Wake County Superior Court on 16 November 2021. Action 21 CVS 500085 was commenced by the filing of a complaint and issuance of summonses in Wake County Superior Court on 18 November 2021. Both cases were consolidated pursuant to a 3 December 2021 order of the Superior Court. The trial court granted Common Cause's motion to intervene in the consolidated cases on 15 December 2021. The parties acknowledge that the Superior Court had personal jurisdiction over Defendants, but the parties dispute whether subject-matter jurisdiction over Plaintiffs' claims is proper.

21 CV 015426

STATE OF NORTH CAROLINA		File No. _____							
WAKE County		In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division							
Name of Plaintiff NORTH CAROLINA LEAGUE OF CONSERVATION VOTERS INC., et al.		CIVIL SUMMONS <input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE) G.S. 1A-1, Rules 3 and 4							
Address P.O. Box 12671									
City, State, Zip Raleigh, N.C. 27605									
VERSUS									
Name of Defendant(s) REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE HOUSE STANDING COMMITTEE ON REDISTRICTING, et al.		Date Original Summons Issued _____							
		Date(s) Subsequent Summons(es) Issued _____							
To Each Of The Defendant(s) Named Below:									
Name And Address Of Defendant 1 Representative Destin Hall North Carolina General Assembly Legislative Building 16 West Jones Street Raleigh, NC 27601		Name And Address Of Defendant 2 _____							
<p>A Civil Action Has Been Commenced Against You! You are notified to appear and answer the complaint of the plaintiff as follows:</p> <ol style="list-style-type: none"> 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and 2. File the original of the written answer with the Clerk of Superior Court of the county named above. If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint. <p>If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.</p>									
Name and Address of Plaintiff's Attorney (if none, Address Of plaintiff) Stephen D. Feldman, Esq. ROBINSON BRADSHAW & HINSON, P.A. 434 Fayetteville Street, Suite 1600 Raleigh, North Carolina 27601		<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;"> Date Issued 11/16/2021 </td> <td style="width: 50%; padding: 2px;"> Time 4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM </td> </tr> <tr> <td colspan="2" style="padding: 2px;"> Signature </td> </tr> <tr> <td colspan="2" style="padding: 2px;"> <input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court </td> </tr> </table>		Date Issued 11/16/2021	Time 4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Signature 		<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
Date Issued 11/16/2021	Time 4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM								
Signature 									
<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court									
<input type="checkbox"/> ENDORSEMENT (ASSESS FEE) This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.		<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;"> Date Of Endorsement _____ </td> <td style="width: 50%; padding: 2px;"> Time <input type="checkbox"/> AM <input type="checkbox"/> PM </td> </tr> <tr> <td colspan="2" style="padding: 2px;"> Signature _____ </td> </tr> <tr> <td colspan="2" style="padding: 2px;"> <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court </td> </tr> </table>		Date Of Endorsement _____	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Signature _____		<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
Date Of Endorsement _____	Time <input type="checkbox"/> AM <input type="checkbox"/> PM								
Signature _____									
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court									
NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.									

RETURN OF SERVICE		
I certify that this Summons and a copy of the complaint were received and served as follows:		
DEFENDANT 1		
Date Served	Time Served <div style="display: flex; justify-content: space-around;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint. <input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein. <input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below. <div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div> <small>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</small>		
<input type="checkbox"/> Other manner of service (specify) <div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div>		
<input type="checkbox"/> Defendant WAS NOT served for the following reason: <div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div>		
DEFENDANT 2		
Date Served	Time Served <div style="display: flex; justify-content: space-around;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint. <input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein. <input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below. <div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div> <small>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</small>		
<input type="checkbox"/> Other manner of service (specify) <div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div>		
<input type="checkbox"/> Defendant WAS NOT served for the following reason: <div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div>		
Service Fee Paid \$		Signature Of Deputy Sheriff Making Return
Date Received		Name Of Sheriff (type or print)
Date Of Return		County Of Sheriff

21 CV 015426

STATE OF NORTH CAROLINA		<div style="border: 1px solid black; padding: 2px;">File No.</div>	
WAKE County		In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division	
Name of Plaintiff NORTH CAROLINA LEAGUE OF CONSERVATION VOTERS INC., et al.		<div style="font-size: 1.2em; font-weight: bold;">CIVIL SUMMONS</div> <div style="margin-top: 10px;"><input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE)</div> <div style="margin-top: 20px;">G.S. 1A-1, Rules 3 and 4</div>	
Address P.O. Box 12671			
City, State, Zip Raleigh, N.C. 27605			
VERSUS			
Name of Defendant(s) REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE HOUSE STANDING COMMITTEE ON REDISTRICTING, et al.		Date Original Summons Issued	
		Date(s) Subsequent Summons(es) Issued	
To Each Of The Defendant(s) Named Below:			
Name And Address Of Defendant 1 Senator Warren Daniel North Carolina General Assembly Legislative Building 16 West Jones Street Raleigh, NC 27601		Name And Address Of Defendant 2	
<p>A Civil Action Has Been Commenced Against You! You are notified to appear and answer the complaint of the plaintiff as follows:</p> <ol style="list-style-type: none"> 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and 2. File the original of the written answer with the Clerk of Superior Court of the county named above. If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint. <p>If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.</p>			
Name and Address of Plaintiff's Attorney (if none, Address Of plaintiff) Stephen D. Feldman, Esq. ROBINSON BRADSHAW & HINSON, P.A. 434 Fayetteville Street, Suite 1600 Raleigh, North Carolina 27601		<div style="display: flex; justify-content: space-between;"> <div> Date Issued <i>11/16/2021</i> Signature <i>[Signature]</i> </div> <div> Time <i>4</i> <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM </div> </div> <div style="margin-top: 5px;"> <input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court </div>	
<input type="checkbox"/> ENDORSEMENT (ASSESS FEE) This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.		<div style="display: flex; justify-content: space-between;"> <div> Date Of Endorsement Signature </div> <div> Time <input type="checkbox"/> AM <input type="checkbox"/> PM </div> </div> <div style="margin-top: 5px;"> <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court </div>	
<p>NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.</p>			

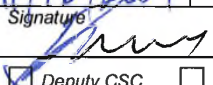
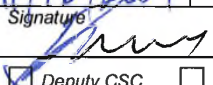
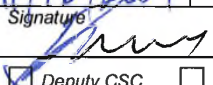
RETURN OF SERVICE		
I certify that this Summons and a copy of the complaint were received and served as follows:		
DEFENDANT 1		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<small>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</small>		
<input type="checkbox"/> Other manner of service (specify)		
 <input type="checkbox"/> Defendant WAS NOT served for the following reason:		
DEFENDANT 2		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<small>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</small>		
<input type="checkbox"/> Other manner of service (specify)		
 <input type="checkbox"/> Defendant WAS NOT served for the following reason:		
Service Fee Paid \$		Signature Of Deputy Sheriff Making Return
Date Received		Name Of Sheriff (type or print)
Date Of Return		County Of Sheriff

21 CV 015426

STATE OF NORTH CAROLINA		File No. _____							
WAKE _____ County		In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division							
Name of Plaintiff NORTH CAROLINA LEAGUE OF CONSERVATION VOTERS INC., et al.		<div style="font-size: 1.2em; font-weight: bold;">CIVIL SUMMONS</div> <div style="margin-top: 10px;"> <input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE) </div> <div style="margin-top: 20px; font-size: 0.8em;"> G.S. 1A-1, Rules 3 and 4 </div>							
Address P.O. Box 12671									
City, State, Zip Raleigh, N.C. 27605									
VERSUS									
Name of Defendant(s) REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE HOUSE STANDING COMMITTEE ON REDISTRICTING, et al.		Date Original Summons Issued _____							
		Date(s) Subsequent Summons(es) Issued _____							
To Each Of The Defendant(s) Named Below:									
Name And Address Of Defendant 1 Senator Ralph E. Hise, Jr. North Carolina General Assembly Legislative Building 16 West Jones Street Raleigh, NC 27601		Name And Address Of Defendant 2 							
<p>A Civil Action Has Been Commenced Against You! You are notified to appear and answer the complaint of the plaintiff as follows:</p> <ol style="list-style-type: none"> 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and 2. File the original of the written answer with the Clerk of Superior Court of the county named above. If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint. <p>If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.</p>									
Name and Address of Plaintiff's Attorney (if none, Address Of plaintiff) Stephen D. Feldman, Esq. ROBINSON BRADSHAW & HINSON, P.A. 434 Fayetteville Street, Suite 1600 Raleigh, North Carolina 27601		<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">Date Issued 11/16/2021</td> <td style="width: 60%;">Time 4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM</td> </tr> <tr> <td colspan="2">Signature </td> </tr> <tr> <td colspan="2"> <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court </td> </tr> </table>		Date Issued 11/16/2021	Time 4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Signature 		<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
Date Issued 11/16/2021	Time 4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM								
Signature 									
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court									
<input type="checkbox"/> ENDORSEMENT (ASSESS FEE) This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.		<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">Date Of Endorsement</td> <td style="width: 60%;">Time <input type="checkbox"/> AM <input type="checkbox"/> PM</td> </tr> <tr> <td colspan="2">Signature</td> </tr> <tr> <td colspan="2"> <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court </td> </tr> </table>		Date Of Endorsement	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Signature		<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
Date Of Endorsement	Time <input type="checkbox"/> AM <input type="checkbox"/> PM								
Signature									
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court									
NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.									

RETURN OF SERVICE		
I certify that this Summons and a copy of the complaint were received and served as follows:		
DEFENDANT 1		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<small>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</small>		
<input type="checkbox"/> Other manner of service (specify)		
 <input type="checkbox"/> Defendant WAS NOT served for the following reason:		
DEFENDANT 2		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<small>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</small>		
<input type="checkbox"/> Other manner of service (specify)		
 <input type="checkbox"/> Defendant WAS NOT served for the following reason:		
Service Fee Paid \$	Signature Of Deputy Sheriff Making Return	
Date Received	Name Of Sheriff (type or print)	
Date Of Return	County Of Sheriff	

21 CV 015426

STATE OF NORTH CAROLINA		File No.							
WAKE County		In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division							
Name of Plaintiff NORTH CAROLINA LEAGUE OF CONSERVATION VOTERS INC., et al.		CIVIL SUMMONS <input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE) G.S. 1A-1, Rules 3 and 4							
Address P.O. Box 12671									
City, State, Zip Raleigh, N.C. 27605									
VERSUS		Date Original Summons Issued Date(s) Subsequent Summons(es) Issued							
Name of Defendant(s) REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE HOUSE STANDING COMMITTEE ON REDISTRICTING, et al.		To Each Of The Defendant(s) Named Below:							
Name And Address Of Defendant 1 Senator Paul Newton North Carolina General Assembly Legislative Building 16 West Jones Street Raleigh, NC 27601		Name And Address Of Defendant 2							
<p>A Civil Action Has Been Commenced Against You! You are notified to appear and answer the complaint of the plaintiff as follows:</p> <ol style="list-style-type: none"> 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and 2. File the original of the written answer with the Clerk of Superior Court of the county named above. If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint. <p>If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.</p>									
Name and Address of Plaintiff's Attorney (if none, Address Of plaintiff) Stephen D. Feldman, Esq. ROBINSON BRADSHAW & HINSON, P.A. 434 Fayetteville Street, Suite 1600 Raleigh, North Carolina 27601		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Date Issued 11/16/2021</td> <td style="width: 50%;">Time 4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM</td> </tr> <tr> <td colspan="2">Signature </td> </tr> <tr> <td colspan="2"> <input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court </td> </tr> </table>		Date Issued 11/16/2021	Time 4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Signature 		<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
Date Issued 11/16/2021	Time 4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM								
Signature 									
<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court									
<input type="checkbox"/> ENDORSEMENT (ASSESS FEE) This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Date Of Endorsement</td> <td style="width: 50%;">Time <input type="checkbox"/> AM <input type="checkbox"/> PM</td> </tr> <tr> <td colspan="2">Signature</td> </tr> <tr> <td colspan="2"> <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court </td> </tr> </table>		Date Of Endorsement	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Signature		<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
Date Of Endorsement	Time <input type="checkbox"/> AM <input type="checkbox"/> PM								
Signature									
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court									
<p>NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.</p>									

RETURN OF SERVICE		
I certify that this Summons and a copy of the complaint were received and served as follows:		
DEFENDANT 1		
Date Served	Time Served <div style="text-align: center;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint. <input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein. <input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below. <div style="border: 1px solid black; height: 40px; margin-top: 5px;">Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</div> <input type="checkbox"/> Other manner of service (specify)		
<input type="checkbox"/> Defendant WAS NOT served for the following reason:		
DEFENDANT 2		
Date Served	Time Served <div style="text-align: center;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint. <input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein. <input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below. <div style="border: 1px solid black; height: 40px; margin-top: 5px;">Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</div> <input type="checkbox"/> Other manner of service (specify)		
<input type="checkbox"/> Defendant WAS NOT served for the following reason:		
Service Fee Paid \$	Signature Of Deputy Sheriff Making Return	
Date Received	Name Of Sheriff (type or print)	
Date Of Return	County Of Sheriff	

21 CV 015426

STATE OF NORTH CAROLINA		File No. _____
WAKE _____ County		In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division
Name of Plaintiff NORTH CAROLINA LEAGUE OF CONSERVATION VOTERS INC., et al.	CIVIL SUMMONS <input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE)	
Address P.O. Box 12671	G.S. 1A-1, Rules 3 and 4	
City, State, Zip Raleigh, N.C. 27605	VERSUS	
Name of Defendant(s) REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE HOUSE STANDING COMMITTEE ON REDISTRICTING, et al.	Date Original Summons Issued _____ Date(s) Subsequent Summons(es) Issued _____	
To Each Of The Defendant(s) Named Below:		
Name And Address Of Defendant 1 Representative Timothy K. Moore North Carolina General Assembly Legislative Building 16 West Jones Street Raleigh, NC 27601	Name And Address Of Defendant 2 _____	
A Civil Action Has Been Commenced Against You! You are notified to appear and answer the complaint of the plaintiff as follows:		
1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and 2. File the original of the written answer with the Clerk of Superior Court of the county named above. If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.		
If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.		
Name and Address of Plaintiff's Attorney (if none, Address Of plaintiff) Stephen D. Feldman, Esq. ROBINSON BRADSHAW & HINSON, P.A. 434 Fayetteville Street, Suite 1600 Raleigh, North Carolina 27601	Date Issued <u>11/16/2021</u> Time <u>4</u> <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM Signature _____ <input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
<input type="checkbox"/> ENDORSEMENT (ASSESS FEE) This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.	Date Of Endorsement _____ Time _____ <input type="checkbox"/> AM <input type="checkbox"/> PM Signature _____ <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.		

RETURN OF SERVICE		
I certify that this Summons and a copy of the complaint were received and served as follows:		
DEFENDANT 1		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<div style="border: 1px solid black; height: 40px; margin-top: 5px;"> <i>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</i> </div>		
<input type="checkbox"/> Other manner of service (specify)		
<input type="checkbox"/> Defendant WAS NOT served for the following reason:		
DEFENDANT 2		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<div style="border: 1px solid black; height: 40px; margin-top: 5px;"> <i>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</i> </div>		
<input type="checkbox"/> Other manner of service (specify)		
<input type="checkbox"/> Defendant WAS NOT served for the following reason:		
Service Fee Paid \$	Signature Of Deputy Sheriff Making Return	
Date Received	Name Of Sheriff (type or print)	
Date Of Return	County Of Sheriff	

21 CV 015426

STATE OF NORTH CAROLINA		File No. _____							
WAKE _____ County		In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division							
Name of Plaintiff NORTH CAROLINA LEAGUE OF CONSERVATION VOTERS INC., et al.		CIVIL SUMMONS <input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE) G.S. 1A-1, Rules 3 and 4							
Address P.O. Box 12671									
City, State, Zip Raleigh, N.C. 27605									
VERSUS									
Name of Defendant(s) REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE HOUSE STANDING COMMITTEE ON REDISTRICTING, et al.		Date Original Summons Issued _____ Date(s) Subsequent Summons(es) Issued _____							
To Each Of The Defendant(s) Named Below:									
Name And Address Of Defendant 1 Senator Philip E. Berger North Carolina General Assembly Legislative Building 16 West Jones Street Raleigh, NC 27601		Name And Address Of Defendant 2 _____							
<p>A Civil Action Has Been Commenced Against You! You are notified to appear and answer the complaint of the plaintiff as follows:</p> <ol style="list-style-type: none"> 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and 2. File the original of the written answer with the Clerk of Superior Court of the county named above. If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint. <p>If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.</p>									
Name and Address of Plaintiff's Attorney (if none, Address Of plaintiff) Stephen D. Feldman, Esq. ROBINSON BRADSHAW & HINSON, P.A. 434 Fayetteville Street, Suite 1600 Raleigh, North Carolina 27601		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Date Issued 11/16/2021</td> <td style="width: 70%;">Time 4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM</td> </tr> <tr> <td colspan="2">Signature </td> </tr> <tr> <td colspan="2"> <input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court </td> </tr> </table>		Date Issued 11/16/2021	Time 4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Signature 		<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
Date Issued 11/16/2021	Time 4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM								
Signature 									
<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court									
<input type="checkbox"/> ENDORSEMENT (ASSESS FEE) This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Date Of Endorsement</td> <td style="width: 70%;">Time <input type="checkbox"/> AM <input type="checkbox"/> PM</td> </tr> <tr> <td colspan="2">Signature _____</td> </tr> <tr> <td colspan="2"> <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court </td> </tr> </table>		Date Of Endorsement	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Signature _____		<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
Date Of Endorsement	Time <input type="checkbox"/> AM <input type="checkbox"/> PM								
Signature _____									
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court									
NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.									

RETURN OF SERVICE		
I certify that this Summons and a copy of the complaint were received and served as follows:		
DEFENDANT 1		
<i>Date Served</i>	<i>Time Served</i> <div style="text-align: center;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	<i>Name Of Defendant</i>
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div> <small><i>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</i></small>		
<input type="checkbox"/> Other manner of service (<i>specify</i>)		
<input type="checkbox"/> Defendant WAS NOT served for the following reason:		
DEFENDANT 2		
<i>Date Served</i>	<i>Time Served</i> <div style="text-align: center;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	<i>Name Of Defendant</i>
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div> <small><i>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</i></small>		
<input type="checkbox"/> Other manner of service (<i>specify</i>)		
<input type="checkbox"/> Defendant WAS NOT served for the following reason:		
<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>	
<i>Date Received</i>	<i>Name Of Sheriff (type or print)</i>	
<i>Date Of Return</i>	<i>County Of Sheriff</i>	

21 CV 015426

STATE OF NORTH CAROLINA		File No. _____							
WAKE County		In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division							
Name of Plaintiff NORTH CAROLINA LEAGUE OF CONSERVATION VOTERS INC., et al.		CIVIL SUMMONS <input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE) G.S. 1A-1, Rules 3 and 4							
Address P.O. Box 12671									
City, State, Zip Raleigh, N.C. 27605									
VERSUS									
Name of Defendant(s) REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE HOUSE STANDING COMMITTEE ON REDISTRICTING, et al.		Date Original Summons Issued _____							
		Date(s) Subsequent Summons(es) Issued _____							
To Each Of The Defendant(s) Named Below:									
Name And Address Of Defendant 1 The State of North Carolina North Carolina State Board of Elections Dobbs Building, Third Floor 430 North Salisbury Street 6400 Mail Service Center Raleigh, NC 27603-1362		Name And Address Of Defendant 2 							
A Civil Action Has Been Commenced Against You! You are notified to appear and answer the complaint of the plaintiff as follows: <ol style="list-style-type: none"> 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and 2. File the original of the written answer with the Clerk of Superior Court of the county named above. If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint. <p>If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.</p>									
Name and Address of Plaintiff's Attorney (if none, Address Of plaintiff) Stephen D. Feldman, Esq. ROBINSON BRADSHAW & HINSON, P.A. 434 Fayetteville Street, Suite 1600 Raleigh, North Carolina 27601		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;"> Date Issued 11/16/2021 </td> <td style="width: 50%; padding: 2px;"> Time 4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM </td> </tr> <tr> <td colspan="2" style="padding: 2px;"> Signature </td> </tr> <tr> <td colspan="2" style="padding: 2px;"> <input checked="" type="checkbox"/> Deputy CSC <input checked="" type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court </td> </tr> </table>		Date Issued 11/16/2021	Time 4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Signature 		<input checked="" type="checkbox"/> Deputy CSC <input checked="" type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
Date Issued 11/16/2021	Time 4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM								
Signature 									
<input checked="" type="checkbox"/> Deputy CSC <input checked="" type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court									
<input type="checkbox"/> ENDORSEMENT (ASSESS FEE) This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;"> Date Of Endorsement </td> <td style="width: 50%; padding: 2px;"> Time <input type="checkbox"/> AM <input type="checkbox"/> PM </td> </tr> <tr> <td colspan="2" style="padding: 2px;"> Signature </td> </tr> <tr> <td colspan="2" style="padding: 2px;"> <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court </td> </tr> </table>		Date Of Endorsement 	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Signature 		<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
Date Of Endorsement 	Time <input type="checkbox"/> AM <input type="checkbox"/> PM								
Signature 									
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court									
NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.									

RETURN OF SERVICE		
I certify that this Summons and a copy of the complaint were received and served as follows:		
DEFENDANT 1		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<small>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</small>		
<input type="checkbox"/> Other manner of service (specify)		
 <input type="checkbox"/> Defendant WAS NOT served for the following reason:		
DEFENDANT 2		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<small>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</small>		
<input type="checkbox"/> Other manner of service (specify)		
 <input type="checkbox"/> Defendant WAS NOT served for the following reason:		
Service Fee Paid \$	Signature Of Deputy Sheriff Making Return	
Date Received	Name Of Sheriff (type or print)	
Date Of Return	County Of Sheriff	

21 CV 015426

STATE OF NORTH CAROLINA		File No. _____ In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division	
WAKE _____ County		CIVIL SUMMONS <input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE) G.S. 1A-1, Rules 3 and 4	
Name of Plaintiff NORTH CAROLINA LEAGUE OF CONSERVATION VOTERS INC., et al.			
Address P.O. Box 12671			
City, State, Zip Raleigh, N.C. 27605			
VERSUS		Date Original Summons Issued _____ Date(s) Subsequent Summons(es) Issued _____	
Name of Defendant(s) REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE HOUSE STANDING COMMITTEE ON REDISTRICTING, et al.			
To Each Of The Defendant(s) Named Below:			
Name And Address Of Defendant 1 Damon Circosta North Carolina State Board of Elections Dobbs Building, Third Floor 430 North Salisbury Street 6400 Mail Service Center Raleigh, NC 27603-1362		Name And Address Of Defendant 2 	
A Civil Action Has Been Commenced Against You! You are notified to appear and answer the complaint of the plaintiff as follows:			
1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and 2. File the original of the written answer with the Clerk of Superior Court of the county named above. If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.			
If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.			
Name and Address of Plaintiff's Attorney (if none, Address Of plaintiff) Stephen D. Feldman, Esq. ROBINSON BRADSHAW & HINSON, P.A. 434 Fayetteville Street, Suite 1600 Raleigh, North Carolina 27601		Date Issued <u>11/16/2021</u> Time <u>4</u> <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM Signature _____ <input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
<input type="checkbox"/> ENDORSEMENT (ASSESS FEE) This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.		Date Of Endorsement _____ Time <input type="checkbox"/> AM <input type="checkbox"/> PM Signature _____ <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.			

RETURN OF SERVICE		
I certify that this Summons and a copy of the complaint were received and served as follows:		
DEFENDANT 1		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<small>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</small>		
<input type="checkbox"/> Other manner of service (specify)		
 <input type="checkbox"/> Defendant WAS NOT served for the following reason:		
DEFENDANT 2		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<small>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</small>		
<input type="checkbox"/> Other manner of service (specify)		
 <input type="checkbox"/> Defendant WAS NOT served for the following reason:		
Service Fee Paid \$		Signature Of Deputy Sheriff Making Return
Date Received		Name Of Sheriff (type or print)
Date Of Return		County Of Sheriff

STATE OF NORTH CAROLINA		File No. <u>21 CV 015426</u>
WAKE County		In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division
<div style="border-bottom: 1px solid black; padding-bottom: 2px;">Name of Plaintiff</div> NORTH CAROLINA LEAGUE OF CONSERVATION VOTERS INC., et al. <div style="border-bottom: 1px solid black; padding-bottom: 2px;">Address</div> P.O. Box 12671 <div style="border-bottom: 1px solid black; padding-bottom: 2px;">City, State, Zip</div> Raleigh, N.C. 27605 <div style="border-bottom: 1px solid black; padding-bottom: 2px; text-align: center;">VERSUS</div>	<div style="border-bottom: 1px solid black; padding-bottom: 2px;">CIVIL SUMMONS</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;"><input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE)</div> <div style="text-align: right; padding-top: 10px;">G.S. 1A-1, Rules 3 and 4</div>	
<div style="border-bottom: 1px solid black; padding-bottom: 2px;">Name of Defendant(s)</div> REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE HOUSE STANDING COMMITTEE ON REDISTRICTING, et al.	<div style="border-bottom: 1px solid black; padding-bottom: 2px;">Date Original Summons Issued</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;">Date(s) Subsequent Summons(es) Issued</div>	
To Each Of The Defendant(s) Named Below:		
<div style="border-bottom: 1px solid black; padding-bottom: 2px;">Name And Address Of Defendant 1</div> Stella Anderson North Carolina State Board of Elections Dobbs Building, Third Floor 430 North Salisbury Street 6400 Mail Service Center Raleigh, NC 27603-1362	<div style="border-bottom: 1px solid black; padding-bottom: 2px;">Name And Address Of Defendant 2</div>	
A Civil Action Has Been Commenced Against You! You are notified to appear and answer the complaint of the plaintiff as follows: <ol style="list-style-type: none">1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and2. File the original of the written answer with the Clerk of Superior Court of the county named above. If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint. <p>If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.</p>		
<div style="border-bottom: 1px solid black; padding-bottom: 2px;">Name and Address of Plaintiff's Attorney (if none, Address Of plaintiff)</div> Stephen D. Feldman, Esq. ROBINSON BRADSHAW & HINSON, P.A. 434 Fayetteville Street, Suite 1600 Raleigh, North Carolina 27601	<div style="border-bottom: 1px solid black; padding-bottom: 2px;">Date Issued <u>11/16/2021</u> Time <u>4</u> <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;">Signature </div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;"><input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court</div>	
<div style="border-bottom: 1px solid black; padding-bottom: 2px;"><input type="checkbox"/> ENDORSEMENT (ASSESS FEE)</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;">This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.</div>	<div style="border-bottom: 1px solid black; padding-bottom: 2px;">Date Of Endorsement Time <input type="checkbox"/> AM <input type="checkbox"/> PM</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;">Signature</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;"><input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court</div>	
NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.		
<div style="display: flex; justify-content: space-between;"><div>AOC-CV-100, Rev. 4/18 © 2018 Administrative Office of the Courts</div><div>(Over)</div></div>		

RETURN OF SERVICE		
I certify that this Summons and a copy of the complaint were received and served as follows:		
DEFENDANT 1		
<i>Date Served</i>	<i>Time Served</i> <div style="text-align: center;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	<i>Name Of Defendant</i>
<div><input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.</div> <div><input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.</div> <div><input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.<div style="border: 1px solid black; height: 40px; margin-top: 2px;"></div><i>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</i></div> <div><input type="checkbox"/> Other manner of service (<i>specify</i>)</div>		
<div><input type="checkbox"/> Defendant WAS NOT served for the following reason:</div> <div style="height: 40px; margin-top: 2px;"></div>		
DEFENDANT 2		
<i>Date Served</i>	<i>Time Served</i> <div style="text-align: center;"><input type="checkbox"/> AM <input type="checkbox"/> PM</div>	<i>Name Of Defendant</i>
<div><input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.</div> <div><input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.</div> <div><input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.<div style="border: 1px solid black; height: 40px; margin-top: 2px;"></div><i>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</i></div> <div><input type="checkbox"/> Other manner of service (<i>specify</i>)</div>		
<div><input type="checkbox"/> Defendant WAS NOT served for the following reason:</div> <div style="height: 40px; margin-top: 2px;"></div>		
<i>Service Fee Paid</i> \$		<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>		<i>Name Of Sheriff (type or print)</i>
<i>Date Of Return</i>		<i>County Of Sheriff</i>

STATE OF NORTH CAROLINA		<div style="border-bottom: 1px solid black; display: flex; justify-content: space-between;"> File No. 21 CV 015426 </div>								
WAKE County		In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division								
Name of Plaintiff NORTH CAROLINA LEAGUE OF CONSERVATION VOTERS INC., et al. <hr/> Address P.O. Box 12671 <hr/> City, State, Zip Raleigh, N.C. 27605 <hr/> <div align="center">VERSUS</div> <hr/> Name of Defendant(s) REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE HOUSE STANDING COMMITTEE ON REDISTRICTING, et al.	<div align="center" style="border-bottom: 1px solid black; padding-bottom: 5px;"> CIVIL SUMMONS </div> <div style="display: flex; justify-content: space-between;"> <input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE) G.S. 1A-1, Rules 3 and 4 </div> <div style="border-bottom: 1px solid black; padding-bottom: 5px;">Date Original Summons Issued</div> <div style="border-bottom: 1px solid black; padding-bottom: 5px;">Date(s) Subsequent Summons(es) Issued</div>									
To Each Of The Defendant(s) Named Below:										
Name And Address Of Defendant 1 Jeff Carmon III North Carolina State Board of Elections Dobbs Building, Third Floor 430 North Salisbury Street 6400 Mail Service Center Raleigh, NC 27603-1362	Name And Address Of Defendant 2									
A Civil Action Has Been Commenced Against You! You are notified to appear and answer the complaint of the plaintiff as follows:										
<ol style="list-style-type: none"> 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and 2. File the original of the written answer with the Clerk of Superior Court of the county named above. If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint. 										
If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.										
Name and Address of Plaintiff's Attorney (if none, Address Of plaintiff) Stephen D. Feldman, Esq. ROBINSON BRADSHAW & HINSON, P.A. 434 Fayetteville Street, Suite 1600 Raleigh, North Carolina 27601	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Date Issued</td> <td style="padding: 2px;">Time</td> </tr> <tr> <td style="padding: 2px;">11/16/2021</td> <td style="padding: 2px;">4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM</td> </tr> <tr> <td colspan="2" style="padding: 2px;">Signature</td> </tr> <tr> <td colspan="2" style="padding: 2px;"> <input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court </td> </tr> </table>		Date Issued	Time	11/16/2021	4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Signature		<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
Date Issued	Time									
11/16/2021	4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM									
Signature										
<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court										
<input type="checkbox"/> ENDORSEMENT (ASSESS FEE) This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Date Of Endorsement</td> <td style="padding: 2px;">Time</td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px;"><input type="checkbox"/> AM <input type="checkbox"/> PM</td> </tr> <tr> <td colspan="2" style="padding: 2px;">Signature</td> </tr> <tr> <td colspan="2" style="padding: 2px;"> <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court </td> </tr> </table>		Date Of Endorsement	Time		<input type="checkbox"/> AM <input type="checkbox"/> PM	Signature		<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
Date Of Endorsement	Time									
	<input type="checkbox"/> AM <input type="checkbox"/> PM									
Signature										
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court										
NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.										
AOC-CV-100, Rev. 4/18 © 2018 Administrative Office of the Courts										

(Over)

RETURN OF SERVICE		
I certify that this Summons and a copy of the complaint were received and served as follows:		
DEFENDANT 1		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<small>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</small>		
<input type="checkbox"/> Other manner of service (specify)		
<input type="checkbox"/> Defendant WAS NOT served for the following reason:		
DEFENDANT 2		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<small>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</small>		
<input type="checkbox"/> Other manner of service (specify)		
<input type="checkbox"/> Defendant WAS NOT served for the following reason:		
Service Fee Paid \$	Signature Of Deputy Sheriff Making Return	
Date Received	Name Of Sheriff (type or print)	
Date Of Return	County Of Sheriff	

STATE OF NORTH CAROLINA		21 CV 315426 File No.
WAKE County		In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division
Name of Plaintiff NORTH CAROLINA LEAGUE OF CONSERVATION VOTERS INC., et al. <hr/> Address P.O. Box 12671 <hr/> City, State, Zip Raleigh, N.C. 27605	CIVIL SUMMONS <input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE) <div style="text-align: right; font-size: small;">G.S. 1A-1, Rules 3 and 4</div>	
VERSUS		
Name of Defendant(s) REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE HOUSE STANDING COMMITTEE ON REDISTRICTING, et al.	Date Original Summons Issued <hr/> Date(s) Subsequent Summons(es) Issued <hr/>	
To Each Of The Defendant(s) Named Below:		
Name And Address Of Defendant 1 Stacy Eggers IV North Carolina State Board of Elections Dobbs Building, Third Floor 430 North Salisbury Street 6400 Mail Service Center Raleigh, NC 27603-1362	Name And Address Of Defendant 2 	
A Civil Action Has Been Commenced Against You! You are notified to appear and answer the complaint of the plaintiff as follows: <ol style="list-style-type: none"> 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and 2. File the original of the written answer with the Clerk of Superior Court of the county named above. If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint. <p>If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.</p>		
Name and Address of Plaintiff's Attorney (if none, Address Of plaintiff) Stephen D. Feldman, Esq. ROBINSON BRADSHAW & HINSON, P.A. 434 Fayetteville Street, Suite 1600 Raleigh, North Carolina 27601	Date Issued <u>11/16/2021</u> Time <u>4</u> <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM Signature <u>[Signature]</u> <input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
<input type="checkbox"/> ENDORSEMENT (ASSESS FEE) This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.	Date Of Endorsement _____ Time _____ <input type="checkbox"/> AM <input type="checkbox"/> PM Signature _____ <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.		

RETURN OF SERVICE		
I certify that this Summons and a copy of the complaint were received and served as follows:		
DEFENDANT 1		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<small>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</small>		
<input type="checkbox"/> Other manner of service (specify)		
 <input type="checkbox"/> Defendant WAS NOT served for the following reason:		
DEFENDANT 2		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<small>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</small>		
<input type="checkbox"/> Other manner of service (specify)		
 <input type="checkbox"/> Defendant WAS NOT served for the following reason:		
Service Fee Paid \$	Signature Of Deputy Sheriff Making Return	
Date Received	Name Of Sheriff (type or print)	
Date Of Return	County Of Sheriff	
 AOC-CV-100 Side Two, Rev. 4/18 © 2018 Administrative Office of the Courts		

21 CV 015026

STATE OF NORTH CAROLINA		File No. _____ In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division									
WAKE _____ County		CIVIL SUMMONS <input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE) G.S. 1A-1, Rules 3 and 4									
Name of Plaintiff NORTH CAROLINA LEAGUE OF CONSERVATION VOTERS INC., et al.											
Address P.O. Box 12671											
City, State, Zip Raleigh, N.C. 27605											
VERSUS											
Name of Defendant(s) REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE HOUSE STANDING COMMITTEE ON REDISTRICTING, et al.		Date Original Summons Issued _____ Date(s) Subsequent Summons(es) Issued _____									
To Each Of The Defendant(s) Named Below:											
Name And Address Of Defendant 1 Tommy Tucker North Carolina State Board of Elections Dobbs Building, Third Floor 430 North Salisbury Street 6400 Mail Service Center Raleigh, NC 27603-1362		Name And Address Of Defendant 2 									
A Civil Action Has Been Commenced Against You! You are notified to appear and answer the complaint of the plaintiff as follows: <ol style="list-style-type: none"> 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and 2. File the original of the written answer with the Clerk of Superior Court of the county named above. If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint. <p>If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.</p>											
Name and Address of Plaintiff's Attorney (if none, Address Of plaintiff) Stephen D. Feldman, Esq. ROBINSON BRADSHAW & HINSON, P.A. 434 Fayetteville Street, Suite 1600 Raleigh, North Carolina 27601		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">Date Issued</td> <td style="width: 50%; padding: 2px;">Time</td> </tr> <tr> <td style="padding: 2px;">11/16/2021</td> <td style="padding: 2px;">4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM</td> </tr> <tr> <td colspan="2" style="padding: 2px;">Signature</td> </tr> <tr> <td colspan="2" style="padding: 2px;"> <input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court </td> </tr> </table>		Date Issued	Time	11/16/2021	4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Signature		<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
Date Issued	Time										
11/16/2021	4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM										
Signature											
<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court											
<input type="checkbox"/> ENDORSEMENT (ASSESS FEE) This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">Date Of Endorsement</td> <td style="width: 50%; padding: 2px;">Time</td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px;"><input type="checkbox"/> AM <input type="checkbox"/> PM</td> </tr> <tr> <td colspan="2" style="padding: 2px;">Signature</td> </tr> <tr> <td colspan="2" style="padding: 2px;"> <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court </td> </tr> </table>		Date Of Endorsement	Time		<input type="checkbox"/> AM <input type="checkbox"/> PM	Signature		<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
Date Of Endorsement	Time										
	<input type="checkbox"/> AM <input type="checkbox"/> PM										
Signature											
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court											
NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.											

RETURN OF SERVICE		
I certify that this Summons and a copy of the complaint were received and served as follows:		
DEFENDANT 1		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<small>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</small>		
<input type="checkbox"/> Other manner of service (specify)		
 <input type="checkbox"/> Defendant WAS NOT served for the following reason:		
DEFENDANT 2		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<small>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</small>		
<input type="checkbox"/> Other manner of service (specify)		
 <input type="checkbox"/> Defendant WAS NOT served for the following reason:		
Service Fee Paid \$		Signature Of Deputy Sheriff Making Return
Date Received		Name Of Sheriff (type or print)
Date Of Return		County Of Sheriff

21 CV 015426

STATE OF NORTH CAROLINA		File No. _____								
WAKE County		In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division								
Name of Plaintiff NORTH CAROLINA LEAGUE OF CONSERVATION VOTERS INC., et al.	<div style="text-align: center;">CIVIL SUMMONS</div> <input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE)									
Address P.O. Box 12671	G.S. 1A-1, Rules 3 and 4									
City, State, Zip Raleigh, N.C. 27605	<div style="text-align: center;">VERSUS</div>									
Name of Defendant(s) REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE HOUSE STANDING COMMITTEE ON REDISTRICTING, et al.	Date Original Summons Issued _____ Date(s) Subsequent Summons(es) Issued _____									
To Each Of The Defendant(s) Named Below:										
Name And Address Of Defendant 1 Karen Brinson Bell North Carolina State Board of Elections Dobbs Building, Third Floor 430 North Salisbury Street 6400 Mail Service Center Raleigh, NC 27603-1362	Name And Address Of Defendant 2 									
A Civil Action Has Been Commenced Against You! You are notified to appear and answer the complaint of the plaintiff as follows:										
<ol style="list-style-type: none"> 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and 2. File the original of the written answer with the Clerk of Superior Court of the county named above. If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint. 										
If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.										
Name and Address of Plaintiff's Attorney (if none, Address Of plaintiff) Stephen D. Feldman, Esq. ROBINSON BRADSHAW & HINSON, P.A. 434 Fayetteville Street, Suite 1600 Raleigh, North Carolina 27601	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Date Issued</td> <td style="padding: 2px;">Time</td> </tr> <tr> <td style="padding: 2px;">11/16/2021</td> <td style="padding: 2px;">4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM</td> </tr> <tr> <td colspan="2" style="padding: 2px;">Signature</td> </tr> <tr> <td colspan="2" style="padding: 2px;"> <input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court </td> </tr> </table>		Date Issued	Time	11/16/2021	4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Signature		<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
Date Issued	Time									
11/16/2021	4 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM									
Signature										
<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court										
<input type="checkbox"/> ENDORSEMENT (ASSESS FEE) This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Date Of Endorsement</td> <td style="padding: 2px;">Time</td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px;"><input type="checkbox"/> AM <input type="checkbox"/> PM</td> </tr> <tr> <td colspan="2" style="padding: 2px;">Signature</td> </tr> <tr> <td colspan="2" style="padding: 2px;"> <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court </td> </tr> </table>		Date Of Endorsement	Time		<input type="checkbox"/> AM <input type="checkbox"/> PM	Signature		<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	
Date Of Endorsement	Time									
	<input type="checkbox"/> AM <input type="checkbox"/> PM									
Signature										
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court										
NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.										

RETURN OF SERVICE		
I certify that this Summons and a copy of the complaint were received and served as follows:		
DEFENDANT 1		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<small>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</small>		
<input type="checkbox"/> Other manner of service (specify)		
<input type="checkbox"/> Defendant WAS NOT served for the following reason:		
DEFENDANT 2		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint.		
<input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.		
<input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.		
<small>Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)</small>		
<input type="checkbox"/> Other manner of service (specify)		
<input type="checkbox"/> Defendant WAS NOT served for the following reason:		
Service Fee Paid \$		Signature Of Deputy Sheriff Making Return
Date Received		Name Of Sheriff (type or print)
Date Of Return		County Of Sheriff

21 CV 15706

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

CVS

2021 NOV 16 P 4:19

WAKE CO. C.S.C.

BY

VERIFIED
COMPLAINT

(Three-Judge Court
Pursuant to N.C.
Gen. Stat. § 1-267.1)

NORTH CAROLINA LEAGUE OF CONSERVATION
VOTERS, INC.; HENRY M. MICHAUX, JR.;
DANDRIELLE LEWIS; TIMOTHY CHARTIER; TALIA
FERNÓS; KATHERINE NEWHALL; R. JASON
PARSLEY; EDNA SCOTT; ROBERTA SCOTT; YVETTE
ROBERTS; JEREANN KING JOHNSON; REVEREND
REGINALD WELLS; YARBROUGH WILLIAMS, JR.;
REVEREND DELORIS L. JERMAN; VIOLA RYALS
FIGUEROA; and COSMOS GEORGE,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in his official
capacity as Chair of the House Standing Committee on
Redistricting; SENATOR WARREN DANIEL, in his
official capacity as Co-Chair of the Senate Standing
Committee on Redistricting and Elections; SENATOR
RALPH E. HISE, JR., in his official capacity as Co-Chair
of the Senate Standing Committee on Redistricting and
Elections; SENATOR PAUL NEWTON, in his official
capacity as Co-Chair of the Senate Standing Committee on
Redistricting and Elections; REPRESENTATIVE
TIMOTHY K. MOORE, in his official capacity as Speaker
of the North Carolina House of Representatives; SENATOR
PHILIP E. BERGER, in his official capacity as President
Pro Tempore of the North Carolina Senate; THE STATE
OF NORTH CAROLINA; THE NORTH CAROLINA
STATE BOARD OF ELECTIONS; DAMON CIRCOSTA,
in his official capacity as Chairman of the North Carolina
State Board of Elections; STELLA ANDERSON, in her
official capacity as Secretary of the North Carolina State
Board of Elections; JEFF CARMON III, in his official
capacity as Member of the North Carolina State Board of
Elections; STACY EGGERS IV, in his official capacity as
Member of the North Carolina State Board of Elections;
TOMMY TUCKER, in his official capacity as Member of
the North Carolina State Board of Elections; and KAREN
BRINSON BELL, in her official capacity as Executive
Director of the North Carolina State Board of Elections,

Defendants.

INTRODUCTION

1. This suit is about harnessing the power of mathematics and computer science to identify and remedy the severe constitutional flaws in the redistricting maps recently enacted by the North Carolina General Assembly—the maps for the U.S. Congress (the “Enacted Congressional Plan,” attached as Ex. A to the Feldman Affidavit),¹ the North Carolina Senate (the “Enacted Senate Plan,” attached as Ex. B),² and the North Carolina House of Representatives (the “Enacted House Plan,” attached as Ex. C)³ (collectively, the “Enacted Plans”).

2. Plaintiffs include the North Carolina League of Conservation Voters, which has members all over the State who are harmed by these constitutional flaws, as well as numerous individual voters, including former elected officials, civil rights leaders, and educators who care deeply about ensuring fair representation for all North Carolinians. Plaintiffs also include professors in the fields of mathematics, statistics, and computer science, all of whom are U.S. citizens and registered North Carolina voters. Over the past decade, advances in these areas have yielded a new field known as “computational redistricting”—which applies principles of mathematics, high-performance computing, and spatial demography to the redistricting process. Mathematicians and scientists working in this field have created tools that allow scientists both to *identify* maps that unconstitutionally burden the right to vote and to *remedy* those violations—by using algorithmic techniques that fix the constitutional flaws while adhering to traditional, neutral redistricting principles and state law.

¹ S.B. 740, S.L. 2021-174, 2021-2022 Sess. (N.C. enacted Nov. 4, 2021). All exhibits referenced in this Complaint refer to the Affidavit of Stephen Feldman, filed with this Complaint.

² S.B. 739, S.L. 2021-173, 2021-2022 Sess. (N.C. enacted Nov. 4, 2021).

³ H.B. 976, S.L. 2021-175, 2021-2022 Sess. (N.C. enacted Nov. 4, 2021).

3. These tools show, distressingly, that the Enacted Plans create (and intentionally create) a severe partisan gerrymander: Although North Carolina is a highly competitive state, the Enacted Plans entrench one party in power—by “packing” some voters of the disfavored party into a relatively small number of districts and “cracking” other voters so they cannot elect their preferred candidates. For example, the Enacted Congressional Plan splinters Democratic strongholds in Wake, Mecklenburg, and Guilford Counties into three districts each, precisely in order to dilute Democratic voting strength. Because of this type of gerrymandering, the favored Republican Party will control North Carolina’s congressional delegation, state Senate, and state House for the coming decade under any realistic electoral scenario—even if the state’s voters consistently and repeatedly prefer the other party’s candidates by substantial margins. In Congress, for example, models show that a nearly tied election, with each party’s candidates receiving about half the statewide vote, will deliver 71% of North Carolina’s delegation to Republicans. Democratic candidates, by contrast, cannot hope to obtain even a 7-to-7 split unless they win by a statewide margin of more than seven percentage points.

4. These computational tools also show that the Enacted Plans egregiously (and intentionally) dilute the voting power of North Carolina’s black citizens—again, by packing some black voters and cracking others. For example, even though members of minority groups account for more than 30% of North Carolina’s adult citizens, and thus could be expected to win elections in four of the state’s 14 districts, the Enacted Congressional Plan deprives them of the ability to win elections in all but two districts. The Enacted Congressional Plan does so by (among other things) breaking apart cohesive and compact black communities like the one centered in Guilford and Forsyth Counties, which the plan divides into four districts dominated by white Republican voters. By contrast, compact districts that comply with North Carolina law and traditional, neutral

districting principles can protect these communities of interest and preserve black voters' opportunity to nominate and elect the candidates of their choice in four districts across the state.

5. The Enacted Plans' partisan gerrymandering and racial vote dilution did not happen by accident. When the General Assembly's redistricting committees drafted the Enacted Plans on computer terminals in hearing rooms, they stated that “[d]ata identifying the race of individuals or voters shall not be used in the construction or consideration of districts,” and that “[p]artisan considerations and election results data shall not be used.” But legislators have vast knowledge of the racial and partisan characteristics of communities across their state—and indeed, the committees expressly allowed legislators to rely on “local knowledge of the character of communities and connections between communities” in mapmaking. Moreover, the committees did not (and could not) prevent legislators from using racial and political data to draw maps outside the hearing rooms and then simply “re-drawing” those maps inside the hearing rooms.

6. Whether legislators leveraged their own knowledge or relied on racial and partisan data outside the hearing rooms, the conclusion is the same: They drew maps that dilute voting strength by race and that gerrymander by party—and they meant to do exactly that. *Cf. Gaffney v. Cummings*, 412 U.S. 735, 753 (1973) (“[I]t is most unlikely that the political impact of ... a [grossly gerrymandered] plan would remain undiscovered by the time it was proposed or adopted, in which event the results would be both known and, if not changed, intended.”).

7. Computational tools will also show that it did not have to be this way. Plaintiffs and their counsel have leveraged the tools of computational redistricting to develop maps that approach being “Pareto optimal,” which means that they are so strong on each redistricting criterion that improving the map on any one criterion necessarily worsens it on another. As a practical matter, these ideal, or nearly ideal, maps cannot be devised by hand, even with the best

commercial redistricting software and weeks to draw them. But these maps can be discovered through computational redistricting. This approach simply was not available to courts in prior redistricting cycles. But this approach is available now. And here, Plaintiffs provide the Court with the results that this approach can yield. The maps that Plaintiffs present in this Complaint—which this Complaint identifies as the Optimized Congressional Map, the Optimized Senate Map, and the Optimized House Map (collectively, the “Optimized Maps”)—avoid the partisan gerrymandering and racial vote dilution that mark the Enacted Plans, while also improving on the Enacted Plans’ compliance with the laws and legitimate policies governing redistricting in North Carolina. Any claim that North Carolina’s political geography or state law compels the outcomes created by the Enacted Plans thus cannot withstand the scrutiny of math and science.

8. By gerrymandering based on party and by diluting and devaluing North Carolinians’ right to vote based on race, the Enacted Plans violate the North Carolina State Constitution’s Free Elections Clause, Equal Protection Clause, and Free Speech and Free Assembly Clauses. The Enacted Senate and House Plans also violate the North Carolina State Constitution’s Whole County Provisions, as interpreted in the *Stephenson/Dickson* line of cases from the North Carolina Supreme Court—because these plans, to achieve their partisan and racial ends, traverse more county lines than necessary and contain districts that are less compact than they could be in fairer, more neutral maps.

9. Plaintiffs ask this Court to set aside the unlawful Enacted Plans and, as interim relief, to enjoin the use of the Enacted Plans in the 2022 primary and general elections. To the extent that the General Assembly does not timely enact redistricting plans that remedy the violations described in this Complaint as fully as the Optimized Maps, the Court should order

Defendants to prepare for, administer, and conduct the 2022 primary and general elections under the Optimized Maps.

10. Although this suit challenges maps drawn by a legislature controlled by one political party, Plaintiffs do not seek via this suit to favor any political party or incumbent. Rather, Plaintiffs sue to advance the common good by promoting competitive, fair, and free elections for all North Carolina citizens. Plaintiffs support fair maps drawn with advanced science and technology that preserve every North Carolinian’s right to vote in free elections on equal terms and that do not discriminate against voters based on race or party.

PARTIES

A. Plaintiffs

11. Plaintiff North Carolina League of Conservation Voters, Inc. (“NCLCV”) brings this action on its own behalf and on behalf of thousands of its members who are registered to vote in North Carolina and reside in every congressional, state Senate, and state House district in the state, but will have their votes systematically diluted by the Enacted Plans on the basis of party, race, or both.⁴ NCLCV is a nonpartisan nonprofit advocacy organization whose mission is to protect the health and quality of life for all North Carolinians, by fighting to build a world with clean air, clean water, clean energy, and a safe climate, all protected by a just and equitable

⁴ In particular, NCLCV has confirmed that it has members who are registered Democratic voters in all 14 districts under the Enacted Congressional Plan, all 50 districts under the Enacted Senate Plan, and all 120 districts under the Enacted House Plan. NCLCV also has confirmed that it has members who are black registered voters in all 14 districts under the Enacted Congressional Plan, at least 48 of the 50 districts under the Enacted Senate Plan, and at least 107 of the 120 districts under the Enacted House Plan, with the only uncertainty involving Senate Districts 46 and 50, and House Districts 1, 22, 36, 70, 85, 86, 93, 95, 110, 117, 118, 119, and 120. NCLCV also counts among its members voters of all political stripes—Democrats, Republicans, and independents—who care about fair redistricting and about fair and effective representation for all North Carolinians

democracy. NCLCV helps elect legislators and statewide candidates who share its values, to build a pro-environment majority across the state of North Carolina. And NCLCV works to hold elected officials accountable for their votes and actions.

12. The Enacted Plans undermine NCLCV’s ability to advance its core mission. By effectively predetermining the results of elections and entrenching one party in power—in individual gerrymandered districts, and in North Carolina’s congressional delegation and the General Assembly as a whole—the Enacted Plans impair NCLCV’s ability to engage in effective advocacy for candidates who will protect the environment, frustrate NCLCV’s efforts to build a pro-environment majority, and undermine NCLCV’s ability to hold legislators accountable. NCLCV will have to expend additional funds and other resources to counteract the gerrymandering in the Enacted Plans. The Enacted Plans also dilute the votes of NCLCV members and frustrate their ability to express their preferences for sound environmental policy at the ballot box and before their legislators.

13. NCLCV is especially concerned about the Enacted Plans’ effects on North Carolina’s black voters. Black citizens are often hurt first and worst by pollution and climate change. And historically, redistricting has been used to exclude communities of color from representation. The Enacted Plans continue that unfortunate legacy, dilute the voting power of black North Carolinians, including voters who are members of NCLCV, and undermine NCLCV’s efforts to address environmental harms in systematically excluded communities of color.

14. Plaintiff Henry M. “Mickey” Michaux, Jr. is a black voter and a U.S. citizen who resides in Durham, North Carolina, within Congressional District 6, Senate District 20, and House District 29, as set forth in the Enacted Plans. Senator Michaux is a longstanding civil rights leader and one of the most prominent black political leaders in North Carolina. Before the enactment of

the Voting Rights Act, he and future Congressman John Lewis worked to register black voters in North Carolina. In 1956, when Dr. Martin Luther King, Jr., first came to Durham, he stayed at Senator Michaux's house; Dr. King urged Senator Michaux to go into politics, which he eventually did. In 1972, Senator Michaux became Durham County's first black representative in the General Assembly. He held office in the North Carolina House from 1973 until 1977, when President Carter appointed Representative Michaux as a U.S. Attorney—the South's first black U.S. Attorney since Reconstruction. In 1983, Senator Michaux returned to the North Carolina House. He served on the House Redistricting Committee and was active on redistricting matters; he also served on the House Elections Committee, including as its Chair. He retired from the House in 2019. Senator Michaux remains a registered Democrat and has consistently voted for Democratic candidates for the General Assembly and Congress. He remains active in Democratic politics, including by working to elect Democratic candidates. In 2020, Senator Michaux served briefly in the North Carolina Senate—making him both the longest-serving member of the House and the shortest-serving member of the Senate.

15. Plaintiff Dandrielle Lewis is a black voter and a U.S. citizen who resides in Greensboro, North Carolina, within Congressional District 11, Senate District 27, and House District 58, as set forth in the Enacted Plans. Dr. Lewis is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly and Congress. Dr. Lewis is the Department Chair of Mathematical Sciences at High Point University. She teaches applied math modeling for business. Her research interests are in finite group theory, interdisciplinary programs, math education, and women and historically underrepresented groups in STEM. Dr. Lewis holds a Ph.D. in mathematics from State University of New York at Binghamton, an M.S.

in mathematics from the University of Iowa, and a B.S. in mathematics and computer science from Winston-Salem State University.

16. Plaintiff Timothy Chartier is a U.S. citizen who resides in Davidson, North Carolina, within Congressional District 13, Senate District 37, and House District 98, as set forth in the Enacted Plans. Dr. Chartier is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly and Congress. Dr. Chartier is the Joseph R. Morton Professor of Mathematics and Computer Science at Davidson College, where he teaches a course on mathematical modeling that covers topics such as optimization. He has written on elections for the Mathematical Association of America and is the current Chair of Congress for (and former Vice President of) the Mathematical Association of America. Dr. Chartier's professional research interests include data analytics, and he has consulted for organizations including the National Basketball Association and the U.S. Olympic and Paralympic Committee. Dr. Chartier holds a Ph.D. in applied mathematics from the University of Colorado at Boulder and an M.S. in computational mathematics and a B.S., *summa cum laude*, in applied mathematics from Western Michigan University.

17. Plaintiff Talia Fernós is a U.S. citizen who resides in Greensboro, North Carolina, within Congressional District 11, Senate District 27, and House District 61, as set forth in the Enacted Plans. Dr. Fernós is an Associate Professor of Mathematics at the University of North Carolina at Greensboro and teaches courses that range from introductory undergraduate to advanced graduate topics and researches infinite groups by examining their geometric and analytic properties. Dr. Fernós holds a Ph.D. and an M.S. in Mathematics from the University of Illinois at Chicago, as well as a B.S. in mathematics and physics from The Evergreen State College.

18. Plaintiff Katherine Newhall is a U.S. citizen who resides in Carrboro, North Carolina, within Congressional District 6, Senate District 23, and House District 56, as set forth in the Enacted Plans. Dr. Newhall is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly and Congress. She is an Associate Professor of Mathematics at the University of North Carolina at Chapel Hill, where she teaches at the undergraduate and graduate levels, including courses on differential equations and stochastic processes. Dr. Newhall's research interests include stochastic modeling, analysis, and simulation. She holds a Ph.D. in mathematics, an M.S. in aeronautical engineering, and a B.S. in applied physics and applied math, all from Rensselaer Polytechnic University, and she conducted postdoctoral work at New York University.

19. Plaintiff R. Jason Parsley is a U.S. citizen and registered voter who resides in Winston-Salem, North Carolina, within Congressional District 12, Senate District 32, and House District 72, as set forth in the Enacted Plans. Dr. Parsley is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly and Congress. Dr. Parsley is an Associate Professor of Mathematics at Wake Forest University, where he teaches a variety of courses, including calculus, geometry, multivariable analysis, and complex analysis, as well as a seminar on voting and redistricting. He is also the former North Carolina State Director for the Mathematical Association of America. Dr. Parsley's research interests include knot theory, differential geometry, and geometric analysis. In particular, he studies the geometry of weighted voting, in which different voters, such as stockholders in a corporation, may have different roles or weights. In this work, he has devised a new, geometrically meaningful method for measuring the power of each voter. Dr. Parsley is currently engaged in a project analyzing the results of Arizona's independent redistricting commission for congressional redistricting following the 2010

census. He has completed training as an expert witness in redistricting. In the 2018–2019 academic year, Dr. Parsley taught two courses at Wake Forest University on the mathematics of voting and redistricting. He has also supervised four students conducting mathematics research on redistricting. He holds a Ph.D. and M.A. in mathematics from the University of Pennsylvania as well as a B.S., *summa cum laude*, in mechanical engineering from Duke University.

20. Plaintiff Edna Scott is a black voter and a U.S. citizen who resides in Warrenton, North Carolina, within Congressional District 2, Senate District 2, and House District 27, as set forth in the Enacted Plans. Ms. Scott is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly and Congress. Ms. Scott is a retired banker, educator, and curator for an African-American museum.

21. Plaintiff Roberta Scott is a black voter and a U.S. citizen who resides in Norlina, North Carolina, within Congressional District 2, Senate District 2, and House District 27, as set forth in the Enacted Plans. Ms. Scott is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly and Congress. Ms. Scott is a retired educator and member of the Warren County Board of Education.

22. Plaintiff Yvette Roberts is a black voter and a U.S. citizen who resides in Warrenton, North Carolina, within Congressional District 2, Senate District 2, and House District 27, as set forth in the Enacted Plans. Ms. Roberts is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly and Congress. Ms. Roberts works in personal care service as a home health aide.

23. Plaintiff Dr. Cosmos George is a black voter and a U.S. citizen who resides in Norlina, North Carolina, within Congressional District 2, Senate District 2, and House District 27, as set forth in the Enacted Plans. Dr. George is a registered Democrat who has consistently voted

for Democratic candidates for the General Assembly and Congress. Dr. George is a retired obstetrician/gynecologist. After retiring, he worked in a free clinic. He has a long history of working actively in his county for civil rights, justice, and equality.

24. Plaintiff Viola Ryals Figueroa is a black voter and a U.S. citizen who resides in Goldsboro, North Carolina, within Congressional District 2, Senate District 4, and House District 10, as set forth in the Enacted Plans. Ms. Figueroa is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly and Congress. Ms. Figueroa is the founder of a nonprofit organization named the Veterans and Military Families Command Center.

25. Plaintiff Jereann King Johnson is a black voter and U.S. citizen who resides in Warrenton, North Carolina, within Congressional District 2, Senate District 2, and House District 27, as set forth in the Enacted Plans. Ms. Johnson is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly and Congress. Ms. Johnson works at the North Carolina Conference of United Methodist Churches as a project coordinator for Living the Word.

26. Plaintiff Reverend Reginald Wells is a black voter and a U.S. citizen who resides in Spring Lake, North Carolina, within Congressional District 4, Senate District 12, and House District 6, as set forth in the Enacted Plans. Reverend Wells is a registered Democrat who has consistently voted for Democratic candidates for the General Assembly and Congress. He is active in politics and served three terms as a member of the Duplin County Board of Commissioners.

27. Plaintiff Yarbrough Williams, Jr., is a black voter and a U.S. citizen who resides in Warrenton, North Carolina, within Congressional District 2, Senate District 2, and House District 27, as set forth in the Enacted Plans. A retired educator who taught for 33 years as well as a retired farmer who raised hogs for 35 years, Mr. Williams is active in politics. He is a registered Democrat

who has consistently voted for, and worked to promote the election of, Democratic candidates for the General Assembly and Congress. Mr. Williams currently serves as the Chair of the Warren County Democratic Party.

28. Plaintiff Reverend Dr. Deloris L. Jerman is a black voter and U.S. citizen who resides in Norlina, North Carolina, within Congressional District 2, Senate District 2, and House District 27, as set forth in the 2021 Plans. Dr. Jerman is a registered Democrat who is active in community affairs and has consistently voted for Democratic Candidates for the General Assembly and Congress. Dr. Jerman is a retired educator and public school and higher education administrator who currently serves as a pastor at Green Chapel Church in Brodnax, Virginia, which is just across the North Carolina border.

29. This Complaint refers to these individual Plaintiffs—that is, all Plaintiffs except for NCLCV—as the Individual Plaintiffs. The Individual Plaintiffs are harmed by the Enacted Plans’ unconstitutional partisan gerrymandering and racial vote dilution. Many Individual Plaintiffs are Democratic and/or black voters who are packed, cracked, and/or deprived of the opportunity to nominate and elect the candidates of their choice in the districts and/or clusters where they reside. Many Individual Plaintiffs are also harmed statewide by the Enacted Plans’ dilution of Democratic and black voting power and by the Enacted Plans’ burdening of the Individual Plaintiffs’ ability to associate with other Democratic voters and to work to elect Democratic candidates. By effectively determining the results of elections for a decade, the Enacted Plans make it more difficult for North Carolinians who are active in politics—including some of the Individual Plaintiffs—to carry out their political activities.

B. Defendants

30. Defendant Destin Hall is a member of the North Carolina House of Representatives. In 2021, Representative Hall serves as Chair of the House Committee on Redistricting that oversaw the creation of the Enacted Plans. Defendant Hall is sued in his official capacity only.

31. Defendant Warren Daniel is a member of the North Carolina Senate. In 2021, Senator Daniel serves as Co-Chair of the Senate Committee on Redistricting and Elections that oversaw the creation of the Enacted Plans. Defendant Daniel is sued in his official capacity only.

32. Defendant Ralph E. Hise, Jr., is a member of the North Carolina Senate. In 2021, Senator Hise serves as Co-Chair of the Senate Committee on Redistricting and Elections that oversaw the creation of the Enacted Plans. Defendant Hise is sued in his official capacity only.

33. Defendant Paul Newton is a member of the North Carolina Senate. In 2021, Senator Newton serves as Co-Chair of the Senate Committee on Redistricting and Elections that oversaw the creation of the Enacted Plans. Defendant Newton is sued in his official capacity only.

34. Defendant Timothy K. Moore is the Speaker of the North Carolina House of Representatives. Defendant Moore is sued in his official capacity only.

35. Defendant Philip E. Berger is President Pro Tempore of the North Carolina Senate. Defendant Berger is sued in his official capacity only.

36. Defendant State of North Carolina is one of the 50 States of the United States of America and has its capital in Raleigh, North Carolina.

37. Defendant North Carolina State Board of Elections is the agency of the State of North Carolina responsible for the regulation and administration of elections in North Carolina.

38. Defendant Damon Circosta is the Chair of the North Carolina State Board of Elections. Defendant Circosta is sued in his official capacity only.

39. Defendant Stella Anderson is the Secretary of the North Carolina State Board of Elections. Defendant Anderson is sued in her official capacity only.

40. Defendant Jeff Carmon III is a Member of the North Carolina State Board of Elections. Defendant Carmon is sued in his official capacity only.

41. Defendant Stacy Eggers IV is a Member of the North Carolina State Board of Elections. Defendant Eggers is sued in his official capacity only.

42. Defendant Tommy Tucker is a Member of the North Carolina State Board of Elections. Defendant Tucker is sued in his official capacity only.

43. Defendant Karen Brinson Bell is the Executive Director of the North Carolina State Board of Elections. Defendant Brinson Bell is sued in her official capacity only.

JURISDICTION AND VENUE

44. This Court has jurisdiction over this action pursuant to Article 26 and Article 26A of Chapter 1 of the North Carolina General Statutes.

45. Under North Carolina General Statutes § 1-81.1, exclusive venue for this action lies with the Wake County Superior Court.

46. Under North Carolina General Statutes § 1-267.1, this action must be heard by a three-judge panel because this action challenges the validity of redistricting plans enacted by the General Assembly.

FACTUAL ALLEGATIONS

I. The Law Governing Redistricting in North Carolina

47. Under Article II, Sections 3 and 5, of the North Carolina State Constitution, “the General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment

of Senators among those districts ... [and] the representative districts and the apportionment of Representatives among those districts.”

48. The North Carolina State Constitution identifies four express limits on the General Assembly’s decennial redistricting authority:

- a. Each Senator and Representative “shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each [legislator] represents being determined for this purpose by dividing the population of the district that he represents by the number of [legislators] apportioned to that district”;
- b. Each district “shall at all times consist of contiguous territory”;
- c. “No county shall be divided in the formation of a senate district ... [or] a representative district” (the “Whole County Provisions”); and
- d. “When established, the senate [and representative] districts and the apportionment of [legislators] shall remain unaltered until the return of another decennial census of population taken by order of Congress.”

N.C. Const. art. II, §§ 3, 5.

49. Several other provisions of the North Carolina State Constitution also apply to legislative and congressional redistricting, including:

- a. The Free Elections Clause, which provides that “[a]ll elections shall be free.” N.C. Const. art. I, § 10.
- b. The Equal Protection Clause, which provides that “[n]o person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.” N.C. Const. art. I, § 19.

- c. The Free Assembly Clause, which provides that “[t]he people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.” N.C. Const. art. I, § 12.
- d. The Free Speech Clause, which provides that “[f]reedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained.” N.C. Const. art. I, § 14.

50. In particular, North Carolina courts have recognized that these clauses prohibit “extreme partisan gerrymandering,” and indeed, any measures that unfairly “dilute and devalue votes of some citizens compared to others.” *Common Cause v. Lewis*, No. 18-CVS-014001, 2019 WL 4569584, at *110 (N.C. Super. Ct. Sept. 3, 2019); *see id.* at *113–29; *see Harper v. Lewis*, No. 19-CVS-012667, slip op. at 6–14 (N.C. Super. Ct. Oct. 28, 2019).

51. Redistricting in North Carolina also must comply with federal law, including the one-person, one-vote requirement and the Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437, as amended (the “VRA”).

52. In a line of cases beginning with *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002) (*Stephenson I*), the North Carolina Supreme Court set forth a mandatory, nine-step algorithm explaining how to apply certain aspects of North Carolina redistricting law consistent with federal law. *See id.*; *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (*Stephenson II*); *Dickson v. Rucho*, 367 N.C. 542, 766 S.E.2d 238 (2014) (*Dickson I*); *Dickson v. Rucho*, 368 N.C. 481, 781 S.E.2d 404 (2015) (*Dickson II*). As the North Carolina Supreme Court summarized:

- a. First, “legislative districts required by the VRA shall be formed” before non-VRA districts.

- b. Second, “[i]n forming new legislative districts, any deviation from the ideal population for a legislative district shall be at or within plus or minus five percent” to ensure “compliance with federal ‘one-person, one-vote’ requirements.”
- c. Third, “in counties having a ... population sufficient to support the formation of one non-VRA legislative district,” “the physical boundaries” of the non-VRA district shall “not cross or traverse the exterior geographic line of” the county.
- d. Fourth, “[w]hen two or more non-VRA legislative districts may be created within a single county,” “single-member non-VRA districts shall be formed within” the county, “shall be compact,” and “shall not traverse” the county’s exterior geographic line.
- e. Fifth, for non-VRA counties that “cannot support at least one legislative district,” or counties “having a non-VRA population pool” that, “if divided into” legislative “districts, would not comply with” one-person, one-vote requirements, the General Assembly should combine or group “the minimum number of whole, contiguous counties necessary to comply with the at or within plus or minus five percent ‘one-person, one-vote’ standard.” Moreover, “[w]ithin any such contiguous multi-county grouping, compact districts shall be formed, consistent with the [one-person, one-vote] standard, whose boundary lines do not cross or traverse the ‘exterior’ line of the multi-county grouping.” “[T]he resulting interior county lines created by any such groupings may be crossed or traversed in the creation of districts within said multi-county grouping but only to the extent necessary to comply with the at or within plus or minus five percent ‘one-person, one-vote’ standard.”

- f. Sixth, “only the smallest number of counties necessary to comply with the at or within plus or minus five percent ‘one-person, one-vote’ standard shall be combined.”
- g. Seventh, “communities of interest should be considered in the formation of compact and contiguous [legislative] districts.”
- h. Eighth, “multi-member districts shall not be” created “unless it is established that such districts are necessary to advance a compelling governmental interest.”
- i. Ninth, “any new redistricting plans . . . shall depart from strict compliance with” these criteria “only to the extent necessary to comply with federal law.”

Dickson II, 368 N.C. at 530–31, 781 S.E.2d at 490–91 (quoting *Stephenson I*, 355 N.C. at 383–84, 562 S.E.2d at 396–97 (quotation marks omitted) (alterations in original)).

II. Partisan Gerrymandering and Racial Discrimination in North Carolina

53. North Carolina has a long history of partisan gerrymandering its congressional and legislative districts. *See generally* J. Michael Bitzer, *Redistricting and Gerrymandering in North Carolina* (2021). In the 2011 redistricting cycle, for example, the General Assembly’s controlling party (the Republican Party) expressly instructed its mapmaker to “ensure Republican majorities,” based on claims that the majority was “‘perfectly free’ to engage in constitutional partisan gerrymandering.” *Common Cause*, 2019 WL 4569584, at *4. In 2016, federal courts invalidated the 2011 congressional and legislative maps as unconstitutional racial gerrymanders.⁵ But when the General Assembly redrew those maps, it again created “extreme partisan gerrymanders.” *Id.* at *125, *135; *see Harper v. Lewis*, No. 19-CVS-012667, slip op. at 13–14 (N.C. Super. Ct. Oct.

⁵ *Harris v. McCrory*, 159 F. Supp. 3d 600 (M.D.N.C. 2016); *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016).

28, 2019). Indeed, one Republican legislative leader “acknowledge[d] freely that” the congressional map “would be a political gerrymander.” *Harper*, slip op. at 13. North Carolina courts ultimately enjoined both the congressional and state legislative maps as partisan gerrymanders that violated the North Carolina State Constitution. *Id.*; *Common Cause*, 2019 WL 4569584, at *125, *135.

54. North Carolina, “[j]ust as with other states in the South,” also has ““a long history of race discrimination generally and race-based vote suppression in particular.”” *Holmes v. Moore*, 270 N.C. App. 7, 20–21, 840 S.E.2d 244, 257 (2020) (quoting *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 223 (4th Cir. 2016)). After black North Carolinians gained the right to vote following the Civil War and began to ally politically with white Republicans, white Democrats devised what they called the “white supremacy campaign” to break apart the new multiracial coalition by exploiting and inflaming racial tensions and encouraging whites to vote on racial, rather than economic, lines.⁶ When Congress enacted the VRA, it looked to “North Carolina’s pre-1965 history of pernicious discrimination” and made “[f]orty North Carolina jurisdictions ... covered” jurisdictions under Section 5 of the VRA based on their use of “suspect prerequisites to voting, like literacy tests.” *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 215, 223 (4th Cir. 2016).

55. “[S]tate officials [have] continued in their efforts to restrict or dilute African American voting strength well after 1980 and up to the present day.” *Holmes*, 270 N.C. App. at 23, 840 S.E.2d at 258. On numerous occasions, “the North Carolina legislature has attempted to suppress and dilute the voting rights of African Americans,” and “the Department of Justice or federal courts have determined that the North Carolina General Assembly acted with

⁶ Helen G. Edmonds, *The Negro and Fusion Politics in North Carolina, 1894–1901*, at 136 (1951).

discriminatory intent, reveal[ing] a series of official actions taken for invidious purposes.” *McCrory*, 831 F.3d at 223 (quotation marks omitted). In 2013 and 2018, for example, the General Assembly enacted restrictive voter-identification laws that state and federal courts struck down as “targeting voters who, based on race, were unlikely to vote” for the party controlling the General Assembly. *Id.* at 215, 223–33; *see Holmes*, 270 N.C. App. at 23, 34, 36. And in just the last decade, courts have repeatedly invalidated North Carolina’s congressional and legislative maps as impermissibly discriminating against voters based on race.⁷

56. North Carolina’s black voters are targeted by race largely due to the persistence of racially polarized voting. Voting in North Carolina, both historically and today, is racially polarized, which means that “the race of voters correlates with the selection of a certain candidate or candidates.” *McCrory*, 831 F.3d at 214. Racial polarization in voting in North Carolina “offers a ‘political payoff for legislators who seek to dilute or limit the minority vote.’” *Holmes*, 270 N.C. App. at 22, 840 S.E.2d at 258 (quoting *McCrory*, 831 F.3d at 222). The fact that “race and party are inexorably linked in North Carolina,” *McCrory*, 831 F.3d at 225, creates an “incentive for intentional discrimination in the regulations of elections,” *id.* at 222.

57. Statistics confirm that racial vote polarization persists in North Carolina. “Ecological inference” tools can measure this racial vote polarization. Ecological inferences

⁷ *Harris v. McCrory*, 159 F. Supp. 3d 600 (M.D.N.C. 2016) (three-judge court), *aff’d sub nom. Cooper v. Harris*, 137 S. Ct. 1455 (2017) (invalidating two congressional districts based on the impermissible use of race); *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016) (three-judge court) (invalidating legislative districts based on the impermissible use of race), *summarily aff’d*, 137 S. Ct. 2211 (2017); *Covington v. North Carolina*, 283 F. Supp. 3d 410 (M.D.N.C. 2018) (three-judge court) (invalidating legislative districts based on the impermissible use of race), *aff’d in part, rev’d in part*, 138 S. Ct. 2548 (2018); *North Carolina v. Covington*, 138 S. Ct. 2548 (2018) (per curiam) (affirming district court’s conclusion that legislative districts unconstitutionally sorted voters on the basis of race).

enable data scientists to draw conclusions about individual behavior or preferences from aggregate data. Those tools show:

- a. During the last two presidential elections, black voters preferred the Democratic candidate by an average margin of 84 percentage points. In the same elections, white voters preferred the Republican candidate by an average margin of 30 percentage points.
- b. During the last three U.S. Senate elections, black voters preferred the Democratic candidate by an average margin of 87 percentage points. In the same elections, white voters preferred the Republican candidate by an average margin of 31 percentage points.
- c. During the last three gubernatorial elections, black voters preferred the Democratic candidate by an average margin of 87 percentage points. In the same elections, white North Carolinians preferred the Republican candidate by an average margin of 32 percentage points.
- d. During the last three elections for Lieutenant Governor, black voters preferred the Democratic candidate by an average margin of 86 percentage points. In the same elections, white North Carolinians preferred the Republican candidate by an average margin of 34 percentage points.
- e. Racial vote polarization exists within, as well as between, political parties. For instance, in the 2020 Democratic primary election for U.S. Senate, white primary voters preferred the white candidate over the black candidate by a margin of 49 percentage points. Black primary voters preferred the black candidate over the white candidate by a margin of 27 percentage points.

58. White residents constitute slightly less than 70% of North Carolina’s adult citizenry, or “citizen voting-age population” (CVAP), according to the U.S. Census Bureau’s American Community Survey, and about 67% of North Carolina’s registered voters, according to registration forms completed by the voters themselves. Because white voters form an overwhelming majority of North Carolina’s electorate, and because of racially polarized voting, white-preferred candidates usually prevail in North Carolina elections, even when strongly opposed by black voters.

59. Black citizens’ ability to attain anything approaching fair representation in the General Assembly and in North Carolina’s congressional delegation thus hinges on fair districting—that is, districting that respects the politically cohesive, geographically distinct black communities that exist today in many parts of North Carolina. But at no point in North Carolina’s modern history have the state’s congressional or legislative districts provided minority voters with fair opportunities to nominate and elect their candidates of choice. Simply put, North Carolina’s federal and state legislators have never fully and accurately represented, or resembled, North Carolina’s people.

III. Enactment of the Enacted Plans

A. The 2021 Redistricting Process

60. This case concerns the 2021 redistricting cycle. Decennial redistricting depends on data generated by the U.S. Census Bureau. Ordinarily, the census data used for redistricting are released in February or March of the year following the decennial census; in 2021, however, the Census Bureau announced that its release of data would be delayed.⁸ The Census Bureau

⁸ Press Release, U.S. Census Bureau, *Census Bureau Statement on Redistricting Data Timeline* (Feb. 12, 2021), <https://www.census.gov/newsroom/press-releases/2021/statement-redistricting-data-timeline.html>.

eventually released census data to state redistricting officials on August 12, 2021, about five months later than normal.⁹

61. The General Assembly formed two committees to oversee the redistricting process, the House Committee on Redistricting and the Senate Committee on Redistricting and Elections. Each was tasked with proposing maps for its own chamber and for Congress. This Complaint refers to the two committees collectively as “the Committees.”

62. The Senate Redistricting Committee was co-chaired by Defendants Hise, Daniel, and Newton. The House Redistricting Committee was chaired by Defendant Hall.

63. On August 9, 2021, the Committee chairs proposed redistricting criteria to govern the 2021 mapmaking process (the “2021 Redistricting Criteria”).¹⁰ The Committee chairs’ proposed criteria were adopted on August 12, 2021, with minimal amendments.¹¹

64. The 2021 Redistricting Criteria state: “The Committees shall draw legislative districts within county groupings as required by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002) (*Stephenson I*), *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (*Stephenson II*), *Dickson v. Rucho*, 367 N.C. 542, 766 S.E.2d 238 (2014) (*Dickson I*), and *Dickson*

⁹ Press Release, U.S. Census Bureau, *2020 Census Statistics Highlight Local Population Changes and Nation’s Ethnic and Racial Diversity* (Aug. 12, 2021), <https://www.census.gov/newsroom/press-releases/2021/population-changes-nations-diversity.html>.

¹⁰ *2021 Joint Redistricting Committee Proposed Criteria*, House Committee on Redistricting & Senate Committee on Redistricting and Elections, N.C. General Assembly, <https://www.ncleg.gov/documentsites/committees/House2021-182/2021/08-09-21/2021%20Joint%20Redistricting%20Committee%20Plan%20Proposed%20Criteria.pdf>; see Travis Fain, *Redistricting Process Starts in N.C.*, WRAL (Aug. 9, 2021) <https://www.wral.com/redistricting-process-starts-in-n-c/19818939>.

¹¹ *Criteria Adopted by the Committees*, House Committee on Redistricting & Senate Committee on Redistricting and Elections, N.C. General Assembly (Aug. 12, 2021), <https://www.ncleg.gov/documentsites/committees/Senate2021-154/2021/08-12-2021/Criteria.adopted.8.12.pdf>; see Rusty Jacobs, *NC Lawmakers Adopt Criteria for Next Round of Redistricting*, WUNC (Aug. 12, 2021), <https://www.wunc.org/politics/2021-08-12/nc-lawmakers-adopt-criteria-for-next-round-of-redistricting>.

v. Rucho, 368 N.C. 481, 781 S.E.2d 460 (2015) (*Dickson II*). Within county groupings, county lines shall not be traversed except as authorized by *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*.”

65. The first step of the *Stephenson/Dickson* algorithm provides that “‘legislative districts required by the VRA shall be formed’ before non-VRA districts.” *Dickson II*, 368 N.C. at 530, 781 S.E.2d at 438. Given North Carolina’s long history of racially discriminatory voting laws and racially polarized voting, *see supra* Part II, the VRA has often been held to require the drawing of districts that protect black voters’ opportunities to nominate and elect their candidates of choice. *E.g.*, *Covington v. North Carolina*, 316 F.R.D. 117, 167 (M.D.N.C. 2016) (three-judge court), *aff’d*, 137 S. Ct. 2211 (2017) (per curiam).

66. The 2021 Redistricting Criteria, however, did not provide for any analysis of whether the VRA required the formation of particular districts. The 2021 Redistricting Criteria stated that the “Committees will draw districts that comply with the Voting Rights Act”—but also stated that “[d]ata identifying the race of individuals or voters *shall not* be used in the construction or consideration of districts in the 2021 Congressional, House, and Senate plans.”¹²

67. The Committees did not explain how they could determine whether maps could comply with the VRA without analyzing racial data. And in fact, it is impossible to determine whether maps comply with the VRA or with North Carolina law without analyzing whether voting is racially polarized and, if so, how that racial vote polarization affects election results.

68. The Committees knew that their map-drawing process did not follow the *Stephenson/Dickson* framework. For example, Senator Dan Blue, a black Democrat, challenged the Committee chairs on how they could draw VRA-compliant districts without considering racial

¹² *Criteria Adopted by the Committees*, *supra* note 11 (emphasis in the original).

data and observed that there is racially polarized voting in North Carolina. Senator Blue also introduced an amendment that would have prohibited the redistricting of black voters for partisan advantage. That amendment was rejected.¹³

69. The 2021 Redistricting Criteria also stated that “[p]artisan considerations and election results data *shall not* be used in the drawing of districts in the 2021 Congressional, House, and Senate plans.”¹⁴ Again, the Committees did not explain how they could determine whether maps complied with the VRA without analyzing political data. In fact, assessing whether minority voters have an adequate opportunity to nominate and elect their preferred candidates *requires* combining election results and racial data.

70. Nevertheless, the Committees did not impose any meaningful limits on legislators’ ability to rely on partisan or racial considerations. Many legislators have vast knowledge of the racial and partisan characteristics of communities across the state; indeed, the Committees expressly permitted reliance on “local knowledge of the character of communities and connections between communities.”¹⁵ And although the mapmaking terminals in the hearing rooms did not contain accessible electoral or racial data, Chair Hall at the October 5 hearing admitted that he could not, and would not, prevent legislators from relying on racial or partisan data outside the hearing rooms and then redrawing maps in the hearing rooms.¹⁶

¹³ *Amendment to Proposed Criteria*, House Committee on Redistricting & Senate Committee on Redistricting and Elections, N.C. General Assembly (Aug. 12, 2021), <https://www.ncleg.gov/documentsites/committees/Senate2021-154/2021/08-12-2021/Proposed%20Amendments/Voting%20Rights%20Act.Amendment.pdf>; *Criteria Adopted by the Committees*, *supra* note 11.

¹⁴ *Criteria Adopted by the Committees*, *supra* note 11 (emphasis in the original).

¹⁵ *Id.*

¹⁶ See N.C. General Assembly, *House Redistricting Committee Hearing*, YouTube (Oct. 5, 2021), https://www.youtube.com/watch?v=9UsiS_6rlUA (1:50:45–1:51:25) (exchange between Chair Hall and Representative Harrison), 1:51:44–1:52:39 (same), 1:53:26–1:54:45 (same), 2:05:23–2:08:05 (exchange between Chair Hall and Representative Reives).

71. The Committees also chose not to rank their redistricting criteria and chose to make many of their enumerated criteria permissive. For example, the criteria provided that the “Committees may consider municipal boundaries when drawing districts.” This approach left the Committees free to decide when to consider municipal boundaries, depending on whether doing so furthered their other goals.¹⁷

72. The Committees held 13 public hearings over the course of three weeks in September.¹⁸ But the maps had not yet been either drawn or proposed. As a result, these hearings did not provide the public or experts a meaningful opportunity to address the maps that the Committees would ultimately propose, consider, and enact.

73. On October 5, the Committees began designing proposed maps in the hearing rooms. In designing legislative maps, committee members were instructed to begin by selecting one of the county clusters that had been developed by an academic research group at Duke University. In their report, the Duke researchers explained that the clusters were “largely algorithmically determined through an optimization procedure outlined by the NC Supreme Court in *Stephenson v. Bartlett*” using the 2020 census data.¹⁹ The Duke study yielded 16 county

¹⁷ *Criteria Adopted by the Committees*, *supra* note 11.

¹⁸ *Joint Public Hearing Schedule*, House Committee on Redistricting & Senate Committee on Redistricting and Elections, N.C. General Assembly (Sept. 13, 2021), <https://www.ncleg.gov/documents/sites/committees/Senate2021-154/2021/General%20Redistricting%20Information/Public%20Hearing%20Schedule%20with%20addresses.pdf>.

¹⁹ Christopher Cooper, Blake Esselstyn, Gregory Herschlag, Jonathan Mattingly & Rebecca Tippet, *NC General Assembly County Clusterings from the 2020 Census* (Aug. 17, 2021), <https://sites.duke.edu/quantifyinggerrymandering/files/2021/08/countyClusters2020.pdf>.

clustering options for the Senate map,²⁰ and eight county clustering options for the House map.²¹ The Duke researchers cautioned that the “one part of *Stephenson v. Bartlett* which this analysis does not reflect is compliance with the Voting Rights Act.”²²

74. Nevertheless, the Committees did not account for this limitation in the Duke study. At the October 5 hearings, the Committee chairs directed staff to present county cluster options for the Senate and House maps based on the Duke study. The Committee chairs were once again warned that failing to consider racial data and analyze compliance with the VRA would render their maps unlawful, and that the Duke study did not take into account the first step of the *Stephenson/Dickson* algorithm. Senator Blue, for instance, questioned how the Committees could determine the proper county clusters without first determining what the VRA requires. The Committee chairs, however, continued to refuse to consider racial data—or, at least, to *publicly* consider racial data—or conduct any study of racially polarized voting in the State.

75. Starting October 6, Committee members were permitted to draw congressional and legislative maps in the hearing rooms. Although the mapmaking terminals in the hearing rooms did not contain electoral or racial data, legislators were free to bring materials into and out of the hearing rooms. Upon information and belief, many of the maps drawn in the hearing rooms had likely been analyzed outside the hearing rooms.

²⁰ *Duke Senate Groupings*, Senate Redistricting and Elections Committee, N.C. General Assembly, <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/10-05-2021/Duke%20Senate%20Groupings%20Maps%2011x17.pdf>.

²¹ *Duke House Groupings*, House Redistricting Committee, N.C. General Assembly, <https://ncleg.gov/documents/sites/committees/House2021-182/2021/10-05-21/Duke%20House%20Groupings%20Maps%2011x17.pdf>.

²² Cooper et al., *supra*, note 19.

76. Midway through the process, on October 21, with almost no advance notice, the Committees announced that public hearings would be held on October 25 and 26 for the public to comment on proposed maps.²³ The Committees did not specify which, if any, of the maps that had been posted online at that point were final contenders, leaving the public unable to identify the maps that were the Committees’ focus.

77. On October 28, the Committees announced committee hearings on November 1 and 2 to consider proposed congressional and legislative maps.

B. Enactment of the Final Maps

78. The General Assembly moved quickly to enact the final maps, holding the first Committee hearings on the proposed maps on November 1 and enacting those maps just three days later, on November 4, each on a party-line vote.²⁴

79. On November 1, the Senate Redistricting Committee held its first and only hearing to consider proposed congressional maps. The Committee considered one map proposed by Senator Ben Clark, a black Democrat, and one map proposed by Chairs Hise, Daniel, and Newton. The Chairs’ map was favorably reported out of the Committee; Senator Clark’s map was not. The next day, the full Senate approved the map, as did the House Redistricting Committee and full House in the following two days, without amendment. On November 4, the General Assembly enacted the map as the Enacted Congressional Plan.

²³ Gary D. Robertson, *NC Redistricting Hearing Speakers Criticize GOP Proposals*, Associated Press (Oct. 25, 2021), <https://www.usnews.com/news/best-states/north-carolina/articles/2021-10-25/public-hearings-offer-input-on-nc-redistricting-proposals>; Charles Duncan, *First Maps Posted in N.C. Redistricting, Public Hearings Scheduled*, Spectrum News 1 (Oct. 21, 2021), <https://spectrumlocalnews.com/nc/charlotte/politics/2021/10/21/first-maps-posted-in-n-c--redistricting--public-hearings-scheduled>.

²⁴ Will Doran, *Take a Closer Look at North Carolina’s Approved Political Maps for Congress, Legislature*, Raleigh News & Observer (Nov. 4, 2021), <https://www.newsobserver.com/news/politics-government/article255552826.html>.

80. Also on November 1, the House Redistricting Committee held a hearing to consider a House map proposed by Chair Hall. The Committee considered no other maps, and the Chair’s map passed the House Redistricting Committee, the full House, the Senate Redistricting Committee, and the full Senate in three days, with few amendments. On November 4, the General Assembly enacted the map as the Enacted House Plan.

81. On November 2, the Senate Redistricting Committee held a hearing to consider a Senate map proposed by Chairs Hise, Daniel, and Newton. The Committee considered no other maps, and the Chairs’ map passed both redistricting committees and both chambers in three days, with few amendments. On November 4, the General Assembly enacted the map as the Enacted Senate Plan.

IV. Partisan Gerrymandering and Racial Vote Dilution in the Enacted Plans

82. North Carolina elections are highly competitive. Republican candidates win many statewide races; Democratic candidates win many others—and nearly all statewide races are closely divided. For example, in 2016, Republican candidates won the most votes for President (51.9% to 48.1%), U.S. Senator (53.0% to 47.0%), and Lieutenant Governor (53.3% to 46.7%); Democratic candidates won the most votes for Governor (50.1% to 49.9%) and Attorney General (50.3% to 49.7%). In 2020, Republican candidates won the most votes for President (50.7% to 49.3%) and Lieutenant Governor (51.6% to 48.4%); Democratic candidates won the most votes for Governor (52.3% to 47.7%) and Attorney General (50.1% to 49.9%).²⁵

83. North Carolina is also a growing state—and one that is growing more and more diverse. Between the 2010 and 2020 Censuses, North Carolina’s population increased by 9.5%,

²⁵ Figures are taken from North Carolina State Board of Elections, *Elections Results Dashboard*, <https://er.ncsbe.gov>. Figures describe the major-party vote and thus exclude votes cast for third-party, independent, and write-in candidates.

from approximately 9.5 million residents to approximately 10.4 million. As a result, North Carolina has been allocated an additional, fourteenth seat in the U.S. House of Representatives. Nearly two-thirds of all of North Carolina’s population growth (63%) has come in Durham, Guilford, Forsyth, Mecklenburg, and Wake Counties. Black, Hispanic, Asian, and multiracial individuals account for nearly all of North Carolina’s population growth (87%).²⁶

84. Fair districting maps would allow North Carolina’s voters—Democratic and Republican, black and white—to translate their voting strength into representation. Where, for example, black voters are geographically concentrated, those voters would be able to elect their preferred candidates. And when one party succeeds in persuading more voters, that party would receive more seats—and a party that received a majority of votes would, more often than not, win at least half the seats. These features are the hallmarks of truly fair, evenhanded districting maps.

85. The Enacted Plans, however, are not fair districting maps. First, these plans are extreme partisan gerrymanders that entrench the political party that currently controls the General Assembly, the Republican Party, in power. Under any plausible electoral scenario, the Republican Party will retain large majorities of seats in Congress, the state Senate, and the state House, even when Democratic candidates receive a significant majority of statewide votes. And second, the Enacted Plans dilute the voting strength of North Carolina’s black voters—by depriving black voters of the opportunity to nominate and elect their preferred candidates in many geographic areas where, under fair maps, they would be able to do so. To accomplish these partisan and racial goals, moreover, the maps unnecessarily traverse county boundaries and create noncompact districts.

²⁶ Figures are taken from U.S. Census, *North Carolina: 2020 Census*, <https://www.census.gov/library/stories/state-by-state/north-carolina-population-change-between-census-decade.html>.

86. The Enacted Plans’ extreme partisan and racial effects do not reflect any inevitable feature of North Carolina’s political geography or state law. As detailed in Part V, alternative maps avoid partisan gerrymandering and racial vote dilution while improving on traditional, neutral districting principles set forth in North Carolina law. The partisan gerrymandering and racial vote dilution in the Enacted Plans instead reflect the intentional choices of those who drew those maps.

87. Below, Plaintiffs detail the racial vote dilution and partisan gerrymandering that the Enacted Plans effectuate. Part A addresses partisan gerrymandering in the Enacted Congressional Plan, Enacted Senate Plan, and Enacted House Plan. Part B addresses racial vote dilution in the Enacted Congressional Plan, Enacted Senate Plan, and Enacted House Plan.

A. Extreme Partisan Gerrymandering in the Enacted Plans

88. Statistics-driven analysis shows that the Enacted Plans gerrymander congressional and legislative districts to entrench Republican political power and that the Enacted Plans will not fairly translate the preferences of North Carolina voters into representation in Congress or the General Assembly. The Enacted Plans crack and pack Democratic voters to dilute Democratic voting strength and guarantee that Republicans will control the North Carolina congressional delegation and General Assembly. As a result, the outcomes of congressional and legislative elections are foreordained, and voters lack the power to hold their leaders accountable.

89. The General Assembly intended the extreme partisan gerrymander that the Enacted Plans yield. Not only do legislative map-drawers typically have exhaustive knowledge of the partisan characteristics of areas across the state, but here the Committees and the General Assembly were told about the partisan implications of the Enacted Plans. The Committees and the General Assembly were informed—as publicly available sources disclosed—that the specific

maps they proposed constituted partisan gerrymanders that would not fairly translate voters’ preferences into representation.²⁷ Yet the General Assembly adopted the Enacted Plans anyway, after a rushed process whose putative prohibition on considering “[p]artisan ... election results” served only to avoid publicizing the partisan data that would shine a light on the severe gerrymandering in the proposed maps and to avert more searching scrutiny of those maps by the public and experts.

i. The Enacted Congressional Plan

90. Like the 2016 congressional plan that was enjoined as an unlawful partisan gerrymander, the Enacted Congressional Plan effects a partisan gerrymander that dilutes Democrats’ voting power and effectively precludes Democrats from winning a majority—or even a tie—in North Carolina’s congressional delegation, even if Democrats win a solid majority of votes statewide.

91. One way to illustrate the extent of the gerrymander is to examine the results the Enacted Congressional Plan would have yielded had it applied to recent statewide elections. This analysis shows that the Enacted Congressional Plan would have translated competitive elections,

²⁷ E.g., Gary D. Robertson, *NC Congressional Map That Helps GOP Gets Senate Panel’s OK*, Associated Press (Nov. 1, 2021), <https://apnews.com/article/north-carolina-legislature-voting-rights-redistricting-congress-f11be13a63b159abaa926928c96413a2> (“It’s not coincident that it’s only in the urban areas that you subject these counties to that kind of treatment,” Senate Minority Leader Dan Blue of Wake County told Republican colleagues.”); accord Will Doran & Brian Murphy, *North Carolina Could Have New Political Maps This Week. Here’s Where Things Stand*, Raleigh News & Observer (Nov. 3, 2021), <https://www.newsobserver.com/news/politics-government/article255506961.html>; Gary D. Robertson, *North Carolina GOP Nears Completion of Redistricting Maps*, Associated Press (Nov. 4, 2021), <https://www.newsobserver.com/news/state/north-carolina/article255525166.html>; Charles Duncan, *Redistricting in N.C.: New Maps Approved, Favoring GOP*, Spectrum News 1 (Nov. 4, 2021), <https://spectrumlocalnews.com/nc/charlotte/politics/2021/11/04/redistricting-in-n-c---new-maps-approved--favoring-gop>; Will Doran, *NC Lawmakers File Their Official Redistricting Plans, Giving GOP a Solid Edge*, Raleigh News & Observer (Oct. 29, 2021), <https://www.newsobserver.com/news/politics-government/article255390786.html>.

including elections with statewide Democratic victories, into Republican candidates winning at least 10 of 14 seats in North Carolina’s congressional delegation (or 71% of the total). That signals an extreme partisan gerrymander.

- a. The 2020 race for Chief Justice of the Supreme Court resulted in a near-tie statewide, with the Republican candidate winning by only 401 votes. But if the votes for the Republican candidate in that election had been cast for Republican congressional candidates under the Enacted Congressional Plan, the Republican candidates would have carried 10 of 14 congressional districts. Republican candidates would thus have won six more districts (10 to 4) than their Democratic opponents despite the effective tie in the statewide vote.
- b. In the 2020 race for Attorney General, the Democratic candidate won the major-party vote by 0.3 percentage points. But if the votes for the Republican candidate in that election had been cast for Republican congressional candidates under the Enacted Congressional Plan, the Republican candidates would still have carried 10 of 14 congressional districts.
- c. In the 2020 race for President, the Republican candidate won the major-party vote by 1.4 percentage points. But if the votes for the Republican candidate in that election had been cast for Republican congressional candidates under the Enacted Congressional Plan, the Republican candidates would still have carried 10 of 14 congressional districts.
- d. In the 2016 election for Governor, the Democratic candidate prevailed by 0.2 percentage points, and in the 2016 election for Insurance Commissioner, the Republican candidate prevailed among major-party voters by 0.8 percentage points.

But if the votes for the Republican candidate in those elections had been cast for Republican congressional candidates under the Enacted Congressional Plan, the Republican candidates would still have carried 10 of 14 congressional districts.²⁸

92. The Enacted Congressional Plan effects this extreme partisan gerrymander by “packing” Democratic voters into Congressional Districts 6 and 9 and “cracking” other Democratic voters among 10 districts where they cannot meaningfully impact elections (Congressional Districts 1, 3, 4, 7, 8, 10, 11, 12, 13, and 14). Several examples follow.

93. The Enacted Congressional Plan fractures Mecklenburg County, home to North Carolina’s largest concentration of Democratic voters, across three districts. The Enacted Congressional Plan packs Democrats into one Mecklenburg County district (Congressional District 9) and then splits Mecklenburg County’s remaining Democratic voters into two districts (Congressional Districts 8 and 13) where they cannot affect election results due to those districts’ large Republican majorities. Had the Enacted Congressional Plan *not* cracked Mecklenburg County in this way, the remainder of the county could have been part of a Democratic-leaning district. *Infra* ¶ 158 (Congressional District 10 of the Optimized Congressional Map).

94. The Enacted Congressional Plan also fragments Wake County, home to North Carolina’s second-largest concentration of Democratic voters, across three districts to carve out an extra safe Republican seat. One district (Congressional District 5) is housed entirely within Wake County and is majority Democrat. The Enacted Congressional Plan then splits Wake County’s remaining voters into two districts. Democrats in Cary are packed into Congressional District 6 with heavily Democratic Durham and Orange Counties, resulting in a second heavily Democratic

²⁸ These figures are taken from North Carolina State Board of Elections, *Elections Results Dashboard*, <https://er.ncsbe.gov>. These figures describe the major-party vote and thus exclude votes cast for third-party, independent, and write-in candidates.

district with an expected Democratic vote share of more than 70% (thus “wasting” Democratic votes). The deliberate packing of Congressional District 6 ensures that Wake County’s remaining Democratic voters, who are apportioned into the heavily Republican Congressional District 7, cannot affect election results. The overall effect is to dilute Democratic votes: If Wake County were *not* split into three districts in this way, Congressional Districts 5 and 6 would be Democratic, and Congressional District 7 would be highly competitive instead of safely Republican. *Infra* ¶ 158 (Congressional Districts 5, 6, and 7 of the Optimized Congressional Map).

95. The Enacted Congressional Plan cracks Democratic voters in the heavily populated Piedmont Triad, comprising Greensboro, High Point, and Winston-Salem. Voters in the Piedmont Triad—which formed one Democratic congressional district under the prior districting plan—are split into four separate congressional districts:

- a. First, Democrats west of downtown Greensboro are cracked into Congressional District 7, which is heavily Republican due to the partisan gerrymandering in Durham, Orange, and Wake Counties to the east. As a result of packing in Congressional District 6, and cracking in Guilford County, Congressional District 7 is far less compact than necessary under a fair map. It has a Polsby-Popper compactness score of only 0.20 (on a scale of 0 to 1, where 1 is the most compact).
- b. Second, Democrats in downtown Greensboro and to the north are cracked into a heavily Republican District 11. District 11 is designed to aggregate enough Republican votes to overcome Greensboro’s Democratic voters by bending to avoid Forsyth County and stretching far west through Republican-majority counties all the way to the Tennessee border. The result is a Polsby-Popper score of just 0.21.

- c. Third, Democratic voters from the High Point area are cracked into a third heavily Republican district, District 10. To overcome the voting strength of these Democratic voters, District 10 cuts west to avoid Democratic populations in central Davidson County and then turns 90 degrees to the south, bringing within its bounds Republican voters as distant as the suburbs of Charlotte. District 10 has a Polsby-Popper score of just 0.20.
- a. Fourth, Democratic voters in Winston-Salem are cracked into District 12, which stretches west into the Republican-dominated areas of Yadkin County and veers southwest until it reaches the northern border of Gaston County, which sits on the South Carolina line. The result, again, is a Republican-dominated district that is less compact than necessary under a fair map: Congressional District 12 has a Polsby-Popper score of just 0.24.

96. The three counties with the largest Democratic populations—Mecklenburg, Wake, and Guilford—are the only counties trisected in the Enacted Congressional Plan. Nothing in North Carolina law or federal law, and no traditional redistricting principle, required that result. Guilford County could have been placed entirely into one district. *Infra* ¶ 158 (Congressional District 11 of the Optimized Congressional Map). Mecklenburg and Wake Counties each have only enough population to fill one-and-a-half districts and thus could have been placed in two districts each. *Infra* ¶ 158 (Congressional Districts 5, 7, 9, and 10 of the Optimized Congressional Map).

97. The Enacted Congressional Plan also dilutes Democratic voting strength elsewhere. Congressional District 4 is drawn in a way that splits a large concentration of Democratic voters in southeastern North Carolina by separating Democrats in Cumberland County from Democrats in Hoke and Scotland Counties. This cracking of Democratic votes ensures that District 4 and

District 8 will elect Republican candidates. Under a fair map, these voters would all reside in one district where they could elect their preferred candidates. *Infra* ¶ 158 (Congressional District 4 of Plaintiffs’ Optimized Congressional Map).

98. At the November 1 Senate Redistricting Committee hearing, Senator Nickel of Wake County warned that the congressional map’s severe partisan tilt and lack of competitive districts constituted an extreme partisan gerrymander.²⁹ In the November 3 House Redistricting Committee hearing, Representative Pricey Harrison of Guilford County likewise cautioned that the congressional map was an extreme partisan gerrymander.³⁰ The General Assembly, however, proceeded to enact the Enacted Congressional Plan.

99. Nothing in North Carolina’s political geography or state law required the General Assembly to enact a congressional map that effected such a severe partisan gerrymander. Under any plausible electoral scenario, Republican candidates will always win the general election in a majority or supermajority of districts. By contrast, Plaintiffs’ Optimized Congressional Map (detailed in Part V.A) shows that it is possible to create a fairer and far less partisan districting plan that complies with state-law requirements and policies, advances traditional and neutral districting principles, and contains more competitive districts. Under the Optimized Congressional

²⁹ See N.C. General Assembly, *Senate Redistricting Committee Hearing*, YouTube (Nov. 1, 2021) <https://www.youtube.com/watch?v=KgSkfFY7r7g> (51:39-54:27) (“[T]his map speaks louder than words. You can’t argue with the map. And it’s right there in front of us: We’ve heard the public comments. We’ve heard the outside experts, and you can see in my diagram exactly what’s going on. This is a map that robs 10.7 [million] North Carolinians of any real choice at the ballot box. It’s a map that guarantees that 10 or 11 Republicans will be elected in our 50-50 state. It doesn’t pass the eye test. It doesn’t pass the smell test. I wish I could make this committee understand why this is so wrong. Why this is so wrong for every single voter in our state. ... [Y]ou can’t have a competition at the ballot box for the best ideas when you decide the outcome in advance. This is not a fair fight. We could do 50-50 districts in every part of the state...” (Sen. Nickel).

³⁰ See N.C. General Assembly, *House Redistricting Committee Hearing*, YouTube (Nov. 3, 2021) <https://www.youtube.com/watch?v=M53S7TbN6ew> (50:50-51:00) (“The partisan analysis shows us it’s a possible 11-3 [map] in a 50-50 state and that’s just flat wrong.”) (Rep. Harrison).

Map, the party that receives more congressional votes statewide will generally receive at least half the state’s congressional seats—allowing voters to meaningfully express their preferences at the ballot box and to hold their representatives in Congress to account.

ii. The Enacted Senate Plan

100. Like the 2016 Senate plan that was enjoined as an unlawful partisan gerrymander, the Enacted Senate Plan effects a partisan gerrymander that dilutes Democratic voting power and effectively precludes Democrats from winning a majority—or even a tie—in the Senate, even if Democrats win a solid majority of votes statewide.

101. One way to illustrate the extent of the gerrymander is to examine the results the Enacted Senate Plan would have yielded had it applied to recent statewide elections. This analysis shows that the Enacted Senate Plan would have translated competitive elections, including elections with statewide Democratic victories, into substantial Republican Senate majorities.

- a. The 2020 race for Chief Justice of the Supreme Court resulted in a near-tie statewide. But if the votes for the Republican candidate in that election had been cast for Republican candidates under the Enacted Senate Plan, the Republican candidates would have carried 28 out of 50 districts, or six more than the Democratic candidates.
- b. In the 2020 race for Attorney General, the Democratic candidate won the major-party vote by 0.3 percentage points. But if the votes for the Republican candidate in that election had been cast for Republican candidates under the Enacted Senate Plan, the Republican candidates would have carried 29 of 50 Senate districts, or eight more than the Democratic candidates.

- c. In the 2020 race for President, the Republican candidate won the major-party vote by 1.4 percentage points. But if the votes for the Republican candidate in that election had been cast for Republican candidates under the Enacted Senate Plan, the Republican candidates would have carried a veto-proof majority of 30 of 50 Senate districts, or 10 more than the Democratic candidates.
- d. In the 2016 election for Governor, the Democratic candidate prevailed by 0.2 percentage points. But if the votes for the Republican candidate in that election had been cast for Republican candidates under the Enacted Senate Plan, the Republican candidates would have carried a veto-proof majority of 30 of 50 Senate districts, or 10 more than the Democratic candidates.
- e. In the 2016 election for Insurance Commissioner, the Republican candidate prevailed among major-party voters by 0.8 percentage points. But if the votes for the Republican candidate in that election had been cast for Republican candidates under the Enacted Senate Plan, the Republican candidates would have carried 28 of 50 Senate districts, or six more than the Democratic candidates.

102. The Enacted Senate Plan achieves its extreme partisan gerrymander by packing Democratic voters into a small number of Senate districts and then cracking the remaining Democratic voters by splitting them across other districts, where they will be outvoted by larger populations of Republican voters.

103. Sometimes, the Enacted Senate Plan packs and cracks Democratic voters based on its selection of county clusters from the possibilities identified in the Duke study.

104. For example, the Enacted Senate Plan configures the 18 counties in Senate Districts 1 and 2 to crack northeastern North Carolina's Democratic votes.

- a. The 18 counties that comprise Senate Districts 1 and 2 can be configured to group in one district Carteret, Chowan, Dare, Hyde, Pamlico, Pasquotank, Perquimans, and Washington Counties; and to group in another district Bertie, Camden, Currituck, Gates, Halifax, Hertford, Martin, Northampton, Tyrrell, and Warren Counties. *Infra* ¶ 165 (Senate Districts 1 and 2 of the Optimized Senate Map). The first district would still favor Republican candidates; the second district would be more competitive and would give Democratic voters an opportunity to elect candidates of their choice.
- b. This configuration is preferable under state law for other reasons as well: It minimizes the number of county traversals among the 18 counties (at 23 traversals), consistent with the Whole County Provisions. It also yields more compact districts. The lowest Polsby-Popper compactness score for either district is 0.17.
- c. The General Assembly rejected this configuration. Instead, under the Enacted Senate Plan, it grouped Bertie, Camden, Currituck, Dare, Gates, Hertford, Northampton, Pasquotank, Perquimans, and Tyrrell Counties into District 1; and Carteret, Chowan, Halifax, Hyde, Martin, Pamlico, Warren, and Washington Counties into District 2. This configuration increases the number of county traversals to 24. It also lowers District 2’s Polsby-Popper compactness score to just 0.10. That score indicates a substantially non-compact district. This configuration dilutes Democratic voting power: With Democratic voters divided between districts, both districts will reliably vote for Republican candidates.

105. The Enacted Senate Plan also clusters counties to crack Democratic votes in and around Buncombe County.

- a. Buncombe County is home to a substantial Democratic population. The Enacted Senate Plan combines Buncombe County with heavily Republican McDowell and Burke Counties into one cluster that is divided into two districts, a lopsidedly Democratic district (District 49) and a heavily Republican district (District 46).
- b. Instead, Buncombe County could be combined into a two-district cluster with Polk and Henderson Counties. Polk and Henderson Counties have larger Democratic vote shares than McDowell and Burke Counties, and clustering them with Buncombe County allows for fairer districts; one district nested in Buncombe County would favor Democrats, but not as lopsidedly as District 49. The other district—spanning Polk, Henderson, and the remainder of Buncombe County—would be competitive, giving both Democratic and Republican voters an opportunity to elect candidates of their choice. *Infra* ¶ 165 (Senate Districts 48 and 49 of the Optimized Senate Map).
- c. In its pursuit of Republican partisan advantage, the Enacted Senate Plan unnecessarily traverses county boundaries. Had Buncombe County been grouped with Henderson and Polk Counties to create more competitive districts, Burke, Gaston, and Lincoln Counties would have been grouped in a two-district cluster, and Cleveland, McDowell, and Rutherford Counties would have been grouped in a one-district cluster. This configuration would have resulted in just six traversals.
- d. Instead, grouping Buncombe County with Burke and McDowell Counties required grouping Henderson, Polk, and Rutherford together into a one-district cluster and grouping Cleveland, Gaston, and Lincoln Counties into a two-district cluster. This arrangement—which the General Assembly adopted to enhance Republican

partisan advantage—requires at least seven traversals. In fact, the Enacted Senate Plan adds an unnecessary county traversal in the cluster with, Cleveland, Gaston, and Lincoln Counties. That yields eight traversals in the nine-county region, instead of six under the fairer configuration.

106. The Enacted Senate Plan also packs and cracks Democratic voters via how it draws lines within the county clusters identified in the Duke study. Several examples follow.

107. The Republican advantage in Senate District 26 results from unconstitutional packing.

- a. Pursuant to the Duke study’s implementation of the *Stephenson/Dickson* algorithm, Guilford County must be grouped into a three-district Democratic-leaning county cluster with Rockingham County.
- b. The Enacted Senate Plan packs most of the cluster’s Democratic voters into two districts—Senate District 27 and Senate District 28, where they generate large Democratic vote margins. In the 2020 elections for Chief Justice, Attorney General, and President, for instance, Senate Districts 27 and 28 had average Democratic vote margins of roughly 23% and 53%, respectively. By wasting these surplus votes, the Enacted Senate Plan ensures that Senate District 26 will reliably vote for Republican candidates: In the same three races, Senate District 26 voted for Republican candidates by an average margin of roughly 24%.
- c. This gerrymandering departs from traditional redistricting principles and reduces the compactness of these districts: Senate District 26 has a Polsby-Popper score of 0.30, and Senate District 28 has a Polsby-Popper score of 0.25. Without this degree of packing, these districts can be designed to be more compact and fairer, such that

Senate District 27 and Senate District 28, while still Democratic, are more competitive, and Senate District 26 is a Democratic-leaning swing district. *Infra* ¶ 165 (Senate Districts 26, 27, and 28 of the Optimized Senate Map).

108. The Republican advantage in Senate District 13 also results from unconstitutional packing. Based on the Duke study’s implementation of the *Stephenson/Dickson* algorithm, the cluster comprising Wake and Granville Counties must contain six Senate districts. Under the Enacted Senate Plan, Wake County’s large Democratic population is artificially “packed” into four overwhelmingly Democratic districts—Senate Districts 14, 15, 16, and 18. As a result, a Democratic-leaning swing district in northern Wake County is replaced with Republican-favored Senate District 13 in the Enacted Senate Plan. *Infra* ¶ 165 (Senate District 13 of the Optimized Senate Map).

109. The Enacted Senate Plan also unnecessarily packs Democratic voters in Mecklenburg County into Senate Districts 38, 39, 40, and 42. At the same time, the plan carves out a district (Senate District 41) that carefully joins Republican-leaning areas in and around Clear Creek and Lakeland Hills with Republican-leaning voting districts around the Carmel Country Club, in pursuit of statewide Republican advantage.

110. The Enacted Senate Plan also unnecessarily packs Democratic voters in Forsyth County. Forsyth County, which is home to a large number of Democratic voters, is grouped into a two-district cluster with Stokes County. The Enacted Senate Plan concentrates Forsyth County’s Democratic voters into one district—Senate District 32—where Democratic candidates would regularly win by more than 30 percentage points. This district’s design ensures that Forsyth County’s Democratic voters cannot impact electoral outcomes in Senate District 31, which is safely Republican. Instead, Senate District 32 and Senate District 31 could have been configured

such that Senate District 32 would be more competitive (while still favorable to Democrats), and Senate District 31 would be a swing district. *Infra* ¶ 165 (Senate Districts 31 and 32 of the Optimized Senate Map). The General Assembly rejected this alternative in order to dilute the voting power of Forsyth County’s Democratic voters.

111. Moreover, in drawing Districts 31 and 32, the General Assembly created unnecessary county traversals. Based on the clusters identified in the Duke study, Forsyth County could have been grouped with Stokes County or Yadkin County. Grouping Forsyth County with Stokes County requires creating a one-district cluster of Alexander, Surry, Wilkes, and Yadkin Counties. There is a minimum of one traversal in the Forsyth-Stokes cluster, and a minimum of four traversals in the Alexander-Surry-Wilkes-Yadkin cluster, for a total of five. By contrast, grouping Forsyth and Yadkin Counties together reduces the minimum of traversals in the six-county area to four: one in the Forsyth-Yadkin cluster and only three in the Alexander-Stokes-Surry-Wilkes cluster.

112. The General Assembly’s effort to maximize partisan (and racial) advantage came at the cost of excess county traversals. The configuration of Senate Districts 1 and 2 creates excess traversals directly attributable to partisan gerrymandering and racial vote dilution (as discussed below), and the configuration of Senate Districts 43, 44, 46, 48, and 49 creates extra traversals directly attributable to partisan gerrymandering. In addition, Senate Districts 47 and 50 are configured to create four extra traversals; it is possible to draw these districts to cross county boundaries only 19 times, instead of 23.

113. Nothing in North Carolina’s political geography or state law required the General Assembly to enact a Senate map that effected such a severe partisan gerrymander. Under any plausible electoral scenario, Republican candidates will always win a majority in the Senate—yet

the Enacted Senate Plan effects this result by creating more county traversals than necessary and by creating districts that are less compact than necessary. By contrast, Plaintiffs’ Optimized Senate Map is fairer and less partisan, while also complying with state redistricting requirements and policies, advancing traditional and neutral districting principles, and creating more competitive districts. *See infra* ¶¶ 165–72.

iii. The Enacted House Plan

114. Like the 2016 House plan that was enjoined as an unlawful partisan gerrymander, the Enacted House Plan effects a partisan gerrymander that dilutes Democrats’ voting power and effectively precludes Democrats from winning a majority—or even a tie—in the House, even if Democrats win a majority of statewide votes.

115. One way to illustrate the extent of the gerrymander is to examine the results the Enacted House Plan would have yielded had it applied to recent statewide elections. This analysis shows that the Enacted House Plan would have translated competitive elections, including elections with statewide Democratic victories, into substantial Republican House majorities.

- a. The 2020 race for Chief Justice of the Supreme Court resulted in a near-tie statewide. But if the votes for the Republican candidate in that election had been cast for Republican candidates under the Enacted House Plan, the Republican candidates would have carried 68 out of 120 House districts, or 16 more than Democratic candidates.
- b. In the 2020 race for Attorney General, the Democratic candidate won the major-party vote by 0.3 percentage points. But if the votes for the Republican candidate in that election had been cast for Republican candidates under the Enacted House

Plan, the Republican candidates would have carried 69 of 120 House districts, or 18 more than the Democratic candidates.

- c. In the 2020 race for President, the Republican candidate won the major-party vote by 1.4 percentage points. But if the votes for the Republican candidate in that election had been cast for Republican candidates under the Enacted House Plan, the Republican candidates would have carried 70 of 120 House districts, or 20 more than Democratic candidates.
- d. In the 2016 election for Governor, the Democratic candidate prevailed by 0.2 percentage points. But if the votes for the Republican candidate in that election had been cast for Republican candidates under the Enacted House Plan, the Republican candidates would have carried 70 of 120 House districts, or 20 more than Democratic candidates.
- e. In the 2016 election for Insurance Commissioner, the Republican candidate prevailed among major-party voters by 0.8 percentage points. But if the votes for the Republican candidate in that election had been cast for Republican candidates under the Enacted House Plan, the Republican candidates would have carried 70 of 120 House districts, or 20 more than Democratic candidates.

116. The Enacted House Plan achieves its extreme partisan gerrymander by packing Democratic voters into a small number of House Districts and then cracking the remaining Democratic voters by splitting them across other districts, where they will be outvoted by larger populations of Republican voters.

117. The Enacted House Plan packs Democratic voters throughout the state.

118. As one example, the four-district county cluster containing New Hanover and Brunswick Counties contains a sizable number of Democratic voters. The General Assembly, however, drew the House district boundaries within the cluster to create three safe Republican districts: House Districts 17, 19, and 20. The Enacted House Plan accomplishes this result by aggregating Wilmington’s most Democratic voting districts in one district—House District 18. A fairer map would distribute these voters into two districts, which would have created an additional district in New Hanover and Brunswick Counties where Democratic voters would have a fighting chance to win elections. *Infra* ¶ 173 (House Districts 17 and 18 of the Optimized House Map).

119. In Buncombe County, the House Plan packs Democrats into Districts 114 and 115 to carve out a Republican seat in District 116. District 116 is the least compact district in the Enacted House Plan. It is possible to draw the district in a more compact way that does not entrench Republican partisan advantage. *Infra* ¶ 173 (House District 116 of the Optimized House Map).

120. The General Assembly systematically drew districts to artificially pack Democratic voters into certain districts (thus “wasting” Democratic votes) and thereby create more districts favorable to Republicans elsewhere. In addition to Buncombe, Brunswick, and New Hanover Counties, the Enacted House Plan also “packs” Democrats in Cumberland County (to create House Districts 43 and 45); Guilford County (to create House Districts 59 and 62); Mecklenburg County (to create House Districts 98 and 103); Pitt County (to create House District 9); and Wake County (to create House Districts 35 and 37), all to ensure that Republicans retain a substantial statewide majority of seats even if Democratic candidates receive a substantial statewide majority of votes.

121. The General Assembly also systematically pursued Republican advantage by cracking Democratic voters elsewhere in the state. For example, the Enacted House Plan groups

Duplin and Wayne Counties into a two-district cluster. Wayne County contains a large population of Democratic voters in the city of Goldsboro and southern Wayne County. The General Assembly could have drawn one House district to keep these communities of Democratic voters together, which would have given Democratic voters the opportunity to elect candidates of their choice in one of the cluster’s two House seats. *Infra* ¶ 173 (House District 10 of the Optimized House Map). Instead, the Enacted House Plan cracks Wayne County’s Democratic voters between House Districts 4 and 10, creating two reliably Republican districts.

122. Onslow County is in a three-district cluster with Pender County. One of the two districts in this cluster could have been based around Jacksonville, such that the district would be competitive and would give the region’s Democratic voters an opportunity to elect candidates of their choice. *Infra* ¶ 173 (House District 15 of the Optimized House Map). The General Assembly, however, instead split the Jacksonville area’s Democratic voters between two districts—House Districts 14 and 15—in order to create three heavily Republican districts that prevent Onslow County’s Democratic voters from electing their candidates of choice.

123. In Alamance County, the General Assembly altered the boundaries of House District 63, which under the prior map had elected a Democrat to the House. The changes make the district more favorable to Republicans, without endangering the Republican majority in surrounding House District 64. Drawing House Districts 63 and 64 such that they are more compact creates districts that more accurately reflect the preferences of Alamance County’s voters—by yielding one Democratic House representative and one Republican House representative—and that increases the fairness of the House map as a whole. *Infra* ¶ 173 (House Districts 63 and 64 of the Optimized House Map).

124. The Enacted House Plan creates this Republican advantage by increasing the number of county traversals beyond what is necessary. In particular, House Districts 1 and 79 could have been reconfigured so that the cluster would have three fewer county traversals. *See infra* ¶ 173.

125. Nothing in North Carolina’s political geography or state law required the General Assembly to enact a House map that effected such a severe partisan gerrymander. Under any plausible electoral scenario, Republican candidates will always win a majority in the House. The Enacted House Plan effects this result by traversing more county boundaries than necessary and by creating districts that are less compact than necessary. By contrast, Plaintiffs’ Optimized House Map is fairer and less partisan, while also complying with state redistricting requirements and policies, advancing traditional districting principles, and creating more competitive districts.

iv. Entrenchment of Partisan Advantage in the Enacted Plans.

126. The Enacted Plans are highly effective in entrenching Republican partisan advantage. The Enacted Plans virtually guarantee Republicans a majority, or even a supermajority, in North Carolina’s congressional delegation and state Senate and House even when voters prefer Democratic candidates statewide.

127. In every statewide general election in the last decade where the Democratic candidate won by less than seven percentage points, the Republicans carried an outright majority of the Enacted Plans’ congressional, state Senate, and state House districts. That is a remarkably consistent and durable partisan skew.

128. Figures 1, 2, and 3 illustrate the unfair partisan advantage that the Enacted Plans entrench. The x-axes depict the Republican share of the major-party vote in every partisan statewide general election conducted in 2020, 2018, 2016, 2014, and 2012. The y-axes depict the

share of seats that the vote share would be expected to generate under the Enacted Congressional Plan (Figure 1), the Enacted Senate Plan (Figure 2), and the Enacted House Plan (Figure 3).

Figure 1: Vote & Seat Share in Enacted Congressional Plan

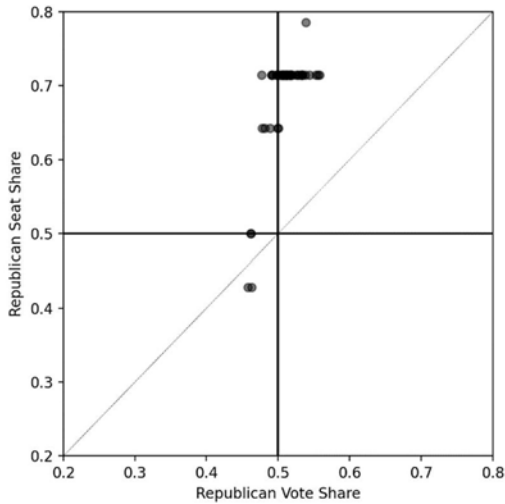


Figure 2: Vote & Seat Share in Enacted Senate Plan

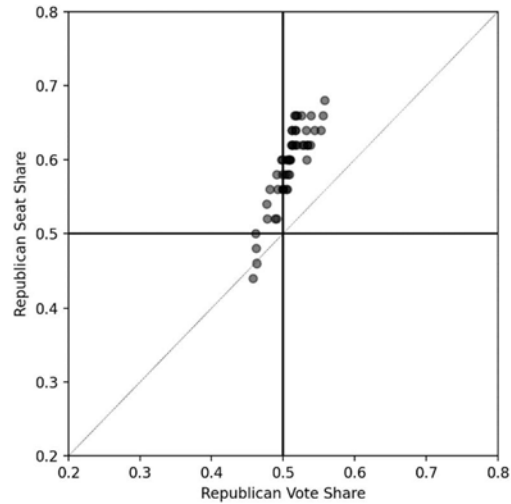
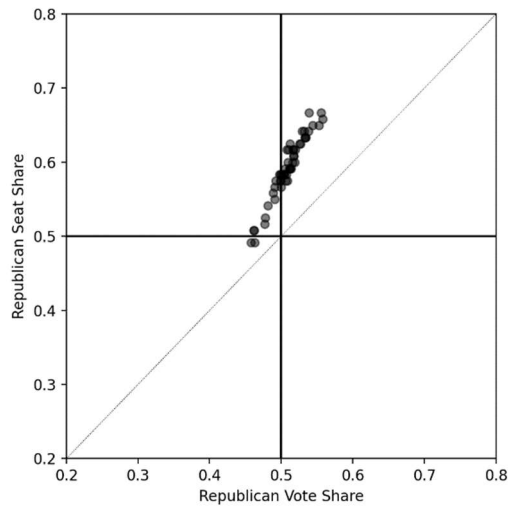


Figure 3: Vote & Seat Share in Enacted House Plan



129. As Figure 1 shows, if the major-party vote is almost evenly divided, 50% to 50%, the Enacted Congressional Plan will likely result in Republicans winning either 64% (9 of 14) or 71% (10 of 14) of North Carolina’s congressional seats. And this remains true even if the statewide vote shifts significantly in favor of Democratic candidates. When Democrats carry the statewide

vote by less than about seven percentage points (53.5% to 46.5%), they routinely continue to carry only four or five districts out of 14. The data suggest that Democrats would carry half or more of the congressional districts only if they were to prevail in the statewide vote by a margin of at least seven or eight percentage points.

130. As Figure 2 shows, if the major-party vote is almost evenly divided, 50% to 50%, the Enacted Senate Plan will likely result in Republicans winning between 56% and 60% of North Carolina’s Senate seats (28 to 30, out of 50). And this remains true even if the statewide vote shifts significantly in favor of Democratic candidates. When Democrats carry the statewide vote by less than about seven percentage points (53.5% to 46.5%), they routinely continue to carry less than half the Senate seats. The data suggests that Democrats would carry half or more of the Senate districts only if they were to prevail in the statewide vote by a margin of at least seven or eight percentage points.

131. As Figure 3 shows, if the major-party vote is almost evenly divided, 50% to 50%, the Enacted House Plan will likely result in Republicans winning between 57% and 58% of North Carolina’s House seats (68 to 70 seats, out of 120). And this remains true even if the statewide vote shifts significantly in favor of Democratic candidates. When Democrats carry the statewide vote by less than about seven percentage points (53.5% to 46.5%), they routinely continue to carry less than half the House seats. The data suggest that Democrats would carry half or more of the House districts only if they were to prevail in the statewide vote by a margin of at least seven or eight percentage points.

B. Racial Vote Dilution in the Enacted Plans

132. The General Assembly in the past has often enacted voting laws that target voters by race. *Supra* Part II. Statistics-driven analysis shows that the Enacted Plans similarly dilute

black voting strength. The Enacted Plans pack black voters in some districts while cracking them across others. And the Enacted Plans deny many black voters the opportunity to nominate and elect their candidates of their choice when, under fair maps that comply with state-law requirements and policies, black voters would have that opportunity.

133. The General Assembly, moreover, intended to target voters by race and engage in racial vote dilution. Not only do legislative map-drawers typically have exhaustive knowledge of the racial and partisan characteristics of areas across the state, but here, the Committees and the General Assembly were told about the racial problems in the Enacted Plans. In particular, they were told that the criteria and methods they adopted would unlawfully dilute the voting strength of black voters.³¹ They were also told—as publicly available sources disclosed—that the specific maps they proposed would unlawfully dilute the voting strength of black voters.³² Yet the General Assembly enacted the Enacted Plans anyway, after a rushed process whose putative prohibition on considering “[d]ata identifying the race of ... voters” or “[p]artisan ... election results” served only to avoid publicizing the racial and partisan data that would shine a light on just how severely the

³¹ Lucille Sherman, *NC Lawmakers Move to Bar the Use of Racial, Election Data in Drawing Election Districts*, Raleigh News & Observer (Aug. 11, 2021), <https://www.newsobserver.com/news/politics-government/article253397675.html>; Lucille Sherman, *NC Lawmakers Will Not Use Racial and Election Data from the Census to Draw District Maps*, Raleigh News & Observer (Aug. 13, 2021), <https://www.newsobserver.com/news/politics-government/article253434564.html>; Yanqi Xu, *Republican Legislators Reject Democrats’ Proposal to Include Racial Data in Redistricting*, NC Policy Watch (Aug. 13, 2021), <https://www.ncpolicywatch.com/2021/08/13/republican-legislators-reject-democrats-proposal-to-include-racial-data-in-redistricting>.

³² Will Doran & Brian Murphy, *North Carolina Could Have New Political Maps This Week. Here’s Where Things Stand*, Raleigh News & Observer, <https://www.newsobserver.com/news/politics-government/article255506961.html> (Nov. 3, 2021); Gary D. Robertson, *North Carolina GOP Nears Completion of Redistricting Maps*, Associated Press (Nov. 4, 2021), <https://www.newsobserver.com/news/state/north-carolina/article255525166.html>; Rusty Jacobs, *The General Assembly Has Passed GOP-Drawn Maps, Setting Stage for Likely Legal Challenges*, WFAE (Nov. 4, 2021), <https://www.wfae.org/politics/2021-11-04/the-general-assembly-has-passed-gop-drawn-maps-setting-stage-for-likely-legal-challenges>.

proposed maps diluted black voting power and to avert more searching scrutiny of the proposed maps by the public and experts. Indeed, the General Assembly refused to even consider amendments “trying to address illegal racial or partisan gerrymanders in certain regions, including Mecklenburg, Wake, and several northeastern counties.”³³

i. The Enacted Congressional Plan

134. The Enacted Congressional Plan dilutes black voting power by dispersing, or “cracking,” black voters among districts so that they cannot impact election outcomes.

135. For example, under the districting plan used for the 2020 congressional elections, one district (old Congressional District 6) preserved the cohesive black populations in Greensboro, High Point, and Winston-Salem in Guilford and Forsyth Counties and protected the ability of these voters to nominate and elect candidates of their choice. The Enacted Congressional Plan, by contrast, deprives these voters of that opportunity by splitting Guilford and Forsyth Counties’ black communities into a separate district dominated by white, Republican voters.

- b. First, black voters who live west of downtown Greensboro are cracked into District 7. The Enacted Congressional Plan draws District 7 to create a substantial Republican advantage. As a result, Congressional District 7 is far less compact than necessary under a fair map: It has a Polsby-Popper compactness score of only 0.20.
- c. Second, black voters in downtown Greensboro and to the north are cracked into a heavily Republican District 11. To overcome the voting strength of these black voters, District 11 curves around Democratic-leaning Forsyth County before

³³ Gary D. Robertson, *North Carolina GOP Nears Completion of Redistricting Maps*, Associated Press (Nov. 4, 2021), <https://www.newsobserver.com/news/state/north-carolina/article255525166.html>.

stretching far west, bringing within its borders Republican-majority regions all the way to the Tennessee border. Again, District 11 is far less compact than necessary under a fair map: It has a Polsby-Popper score of just 0.21.

- d. Third, black voters from the High Point area are cracked into a third heavily Republican district, District 10. To overcome the voting strength of these black voters, District 10 cuts west to skirt Democratic populations in Davidson County, then turns 90 degrees to the south to collect white Republican voters all the way to the Charlotte suburbs. Again, District 10 is less compact than necessary under a fair map: It has a Polsby-Popper score of just 0.20.
- e. Fourth, black voters in Winston-Salem are cracked into District 12, which stretches west into Republican-dominated areas of Yadkin County and then heads southwest until it reaches the Gaston County border. The result, again, is that District 12 is less compact than necessary under a fair map: It has a Polsby-Popper score of 0.24.

136. The Committee chairs were warned of the Enacted Congressional Plan’s racial impact. In the November 3 House Redistricting Committee hearing, Representative Pricey Harrison of Guilford County stated that the map divided the Triad region “very significantly in ways that are splitting up the large African-American populations and communities of interest,” in part by extending Congressional District 11 from “downtown Greensboro all the way to the Tennessee border.” The General Assembly, however, proceeded to enact a map carving up the Triad’s black communities into different districts.³⁴

³⁴ See also N.C. General Assembly, *House Redistricting Committee Hearing*, YouTube (Nov. 3, 2021) <https://www.youtube.com/watch?v=M53S7TbN6ew> ((50:30–50:50) (Representative Harrison observing, “I think that it was a problem for us not to consider, as I said, on the Senate maps and the House maps, the Voting Rights Act implications for this because I think you have a

137. The Enacted Congressional Plan also dilutes black voting strength in Durham County through cracking. The Plan combines Durham County’s black population into one heavily Democratic district—Congressional District 6—that is dominated by white Democratic voters. Although Congressional District 6 is likely to vote for a Democratic candidate in the general election, black voters in Durham will not have the opportunity to nominate and elect candidates of their choice because of racially polarized voting in the Democratic primary. This result could have been avoided by combining Durham’s black communities with black communities in northeastern North Carolina in Congressional District 2. *Infra* ¶ 158 (Congressional District 2 of the Optimized Congressional Map). The Enacted Congressional Plan, however, places Durham County’s black voters in Congressional District 6 to limit their electoral power.

138. The Enacted Congressional Plan splits most of the black population in southeastern North Carolina across three separate districts. The black communities in Bladen, Cumberland, Duplin, Hoke, Richmond, Robeson, Sampson, and Scotland Counties are divided among Congressional Districts 3, 4, and 8. All three districts are likely to elect white-preferred Republican candidates. And because the General Assembly drew these districts to dilute black voting strength, these districts are less compact than they would be under a fair map. These districts could have been drawn to preserve black voters’ opportunity to nominate and elect candidates of their choice while improving compactness. *Infra* ¶ 158 (Congressional District 4 of the Optimized Congressional Map).

139. By cracking black North Carolinians and diluting their voting power across the state, the Enacted Congressional Plan provides black voters an opportunity to nominate and elect

serious violation here with the African American populations in Greensboro that are all divided up. I just don’t understand it. I think it’s a terrible congressional map.”)).

their preferred candidates in only *two* of the state’s 14 congressional districts—or about 14% of the districts. That is far less than black citizens’ share of North Carolina’s voting-age population.

140. Nothing in North Carolina’s political geography or state law required the General Assembly to enact a congressional map that dilutes black voting strength. As shown in Plaintiffs’ Optimized Congressional Map, it is possible to draw four, rather than two, highly compact congressional districts where black voters can nominate their preferred candidates in Democratic primaries and then elect them in the general elections. *Infra* ¶ 158.

ii. The Enacted Senate Plan

141. The Enacted Senate Plan dilutes black voting power by packing black voters into a small number of districts to reduce their voting power in other districts, and by cracking other black voters across different districts. As explained, the Committees skipped the very first requirement of the *Stephenson/Dickson* algorithm, which provides that “‘legislative districts required by the VRA shall be formed’ before non-VRA districts” and before identifying county clusters. *Dickson II*, 368 N.C. at 490, 781 S.E.2d at 413 (quoting *Stephenson I*, 355 N.C. at 383, 562 S.E.2d at 396-97); *see supra* ¶ 52. But even taking the county clusters that the Duke study identified as a given (without regard to the first step of the *Stephenson/Dickson* algorithm), the Enacted Senate Plan unlawfully dilutes black voting strength.

142. Northeastern North Carolina is home to a significant, historically cohesive community of black voters. The community was one of the earliest targets of racial gerrymandering in North Carolina: After the Civil War, it was packed into the “Black Second” congressional district in order to dilute black voting strength.³⁵

³⁵ Eric Anderson, *Race and Politics in North Carolina 1872–1901: The Black Second* 3–4, 141 (1981).

143. The Enacted Senate Plan dilutes the black community’s voting strength by cracking the community across Senate Districts 1 and 2.

144. Pursuant to the Duke study’s implementation of the *Stephenson/Dickson* algorithm, the 18 counties within Senate Districts 1 and 2 can be clustered into two possible one-district groupings.

- a. First, the 18 counties can be configured such that Carteret, Chowan, Dare, Hyde, Pamlico, Pasquotank, Perquimans, and Washington Counties are grouped into one district; and Bertie, Camden, Currituck, Gates, Halifax, Hertford, Martin, Northampton, Tyrrell, and Warren Counties are grouped into a second district. Pursuant to this configuration, the first district would still favor white-preferred Republican candidates, but the second district would maintain much of northeastern North Carolina’s black community in one district and preserve these voters’ opportunity to nominate and elect candidates of their choice. *Infra* ¶ 165 (Senate Districts 1 and 2 of the Optimized Senate Map).
- b. This configuration is preferable under state law for other reasons as well: It minimizes the number of county traversals among the 18 counties to 23 county-border crossings, consistent with the Whole County Provisions. It also yields more compact districts. The lowest Polsby-Popper compactness score for either district is 0.17.
- c. The General Assembly, however, rejected this configuration. Instead, the General Assembly split northeastern North Carolina’s black community into two districts in which they cannot elect candidates of their choice. And in doing so, the General Assembly unnecessarily increased county traversals and reduced compactness.

- d. Under the Enacted Senate Plan, Bertie, Camden, Currituck, Dare, Gates, Hertford, Northampton, Pasquotank, Perquimans, and Tyrrell Counties are grouped into District 1; and Carteret, Chowan, Halifax, Hyde, Martin, Pamlico, Warren, and Washington Counties are grouped into District 2. This configuration increases the number of county traversals to 24. It also lowers District 2's Polsby-Popper compactness score to just 0.10. That score indicates a substantially non-compact district.
- e. This configuration dilutes black voting power: With black voters divided between districts, both districts will reliably elect the white-preferred Republican candidates.
- f. The General Assembly knew that adopting the Enacted Senate Plan's configuration would dilute black voting power. Senator Blue warned, both in committee and on the floor, that adopting this configuration would dilute the voting power of black voters by cracking them between two side-by-side districts, and he offered an amendment to avoid this result by using the first configuration.³⁶ The amendment was rejected, and the Committees and General Assembly enacted their plan to divide northeastern North Carolina's black community into two districts and deny black voters the opportunity to elect their candidates of choice.

145. The Enacted Senate Plan draws Senate District 14 to pack the large black community in Raleigh, in Wake County, while cracking black voters elsewhere.

- a. Drawing compact Senate districts in Wake County would create two districts in which Wake County's black voters have the opportunity to nominate and elect

candidates of their choice, both in the Democratic primary election and in the general election. The Enacted Senate Plan eliminates one of these districts. It does so through a combination of packing and cracking.

- b. Under the previous map, the old Senate District 14 provided black voters in Raleigh and eastern Wake County the opportunity to nominate and elect their candidates of choice. The Enacted Senate Plan, however, increases the proportion of Senate District 14's voters who are black by nearly ten percentage points. This packing of black voters helps push the district's Democratic vote share to more than 70%. The Enacted Senate Plan thus "wastes" these additional black votes in District 14 and then splits other black voters into Senate District 18, where black candidates will often be unable to elect candidates of their choice due to racially polarized voting in primary elections. This creates an additional district where the white-preferred candidate will prevail. Nothing in North Carolina's political geography or state law required the packing of black voters into District 14 or the cracking of voters into District 18. To the contrary, a more compact configuration would have yielded two, more compact Senate districts where Wake County's large black population could nominate and elect their candidates of choice. *Infra* ¶ 165 (Senate Districts 14 and 18 of the Optimized Senate Map).
146. The Enacted Senate Plan packs and cracks black voters in Guilford County.
- a. In Guilford County, the Enacted Senate Plan again adds thousands of black voters to a district where black voters already had the opportunity to nominate and elect the candidate of their choice, to weaken black voting power in an adjoining district.

- b. Under the previous map, old Senate District 28 already allowed black voters to nominate and elect their candidates of choice. The Enacted Senate Plan, however, increases the proportion of the district's voting population that is black by nearly six percentage points. This packing, in turn, cracks the rest of Guilford County's black community into Senate District 27. Although Senate District 27 is heavily Democratic, it is unlikely to nominate a black-preferred candidate due to racially polarized voting in the Democratic primary.
- c. Senate District 27 could have been drawn, consistent with North Carolina law, to form a second district where Guilford County's black community would have the opportunity to nominate and elect its candidates of choice. Instead, the General Assembly drew the district to add more white voters and to deprive the black community of the opportunity to elect the candidates of its choice. *Infra* ¶ 165 (Senate Districts 27 and 28 of the Optimized Senate Map).

147. Nothing in North Carolina's political geography or state law required the General Assembly to enact a Senate map that dilutes black voting strength. As shown in Plaintiffs' Optimized Senate Map, it is possible to draw at least three additional Senate districts that comply with North Carolina law, adhere to traditional and neutral districting principles, and preserve the opportunity of North Carolina's black communities to nominate and elect their candidates of choice.

iii. The Enacted House Plan.

148. The Enacted House Plan dilutes black voting power by packing black voters into a small number of districts to reduce their voting power in other districts and by cracking other black voters across districts so that they cannot affect election outcomes. As with the Enacted Senate

Plan, the Committees skipped the first requirement of the *Stephenson/Dickson* algorithm. *Supra* ¶¶ 65–69. But even taking as a given the county clusters that the Duke study identified (without regard to the first step of the *Stephenson/Dickson* algorithm), the Enacted House Plan unlawfully dilutes black voting strength.

149. Wayne County is home to well-established black communities in Brogden and Goldsboro. Wayne County’s two House districts can be drawn to preserve these communities within one district where black voters have an opportunity to nominate and elect candidates of their choice. *Infra* ¶ 173 (House District 10 of the Optimized House Map). Instead, the Enacted House Plan cracks Wayne County’s black population into two districts (House Districts 4 and 10) where they have no opportunity to elect their candidates of choice due to opposition from white voters. The line between the two districts severs Goldsboro from Brogden just a few miles to the south.

150. Pitt County must accommodate two House districts. The Enacted House Plan draws the line between these districts to pack Greenville’s largest black neighborhoods into House District 8. The Enacted House Plan also carves several largely white neighborhoods southeast of downtown Greenville out of House District 8 and places them in House District 9. This enables white voters to vote as a bloc to defeat black-preferred candidates in House District 9.

151. Cumberland County is also affected by racial vote dilution in the Enacted House Plan. The county’s four districts are configured to pack black voters into House District 44. By doing so, the Enacted House Plan deprives black residents in several other parts of the county—including in downtown Fayetteville—the opportunity to nominate and elect candidates of their choice.

152. The Enacted House Plan does the same in Wake County. Wake County can yield five districts where black voters have the opportunity to nominate and elect the candidates of their choice. *Infra* ¶ 173. The Enacted House Plan concentrates black voters into House Districts 38 and then cracks other black voters by splitting them into House Districts 11, 34, and 35 in order to carve out one additional district where white voters can vote as a bloc to defeat the black-preferred candidate.

153. Nothing in North Carolina’s political geography or state law required the General Assembly to enact a House map that dilutes black voting strength. As shown in Plaintiffs’ Optimized House Map, it is possible to draw at least four additional House districts in Wayne, Wake, Cumberland, and Pitt Counties that comply with North Carolina law, adhere to traditional districting principles, and preserve black voters’ opportunity to nominate and elect candidates of their choice. *Infra* ¶ 173.

V. Plaintiffs’ Optimized Maps

154. Plaintiffs have harnessed the power of high-performance computers, and employed cutting-edge computational methods and resources, to draw alternative maps that comply with state-law requirements and policies, advance traditional and neutral districting principles, and yield more competitive districts. Indeed, using these cutting-edge tools, Plaintiffs have created maps that approach being “Pareto optimal,” which means that the maps are so strong on each redistricting criterion that improving the map on any one criterion necessarily worsens it on another. This Complaint refers to these maps as the “Optimized Maps.” Part A describes the Optimized Congressional Map; Part B describes the Optimized Senate Map; and Part C describes the Optimized House Map.

155. Plaintiffs offer their Optimized Maps for two purposes.

156. First, these maps show that if the General Assembly had wanted to create fair maps—ones that avoid partisan gerrymandering and racial vote dilution—it could have done so while adhering to North Carolina law and traditional and neutral districting principles. Indeed, as detailed below, Plaintiffs’ Optimized Maps better implement these traditional and neutral districting principles than do the Enacted Plans. Hence, the General Assembly cannot claim that North Carolina’s political geography or state law compelled the skewed results the Enacted Plans yield. In fact, in every Senate and House cluster (except the one-district clusters mandated by the *Stephenson/Dickson* algorithm), the Optimized Maps increase partisan fairness, increase black voters’ electoral opportunities, reduce the number of county traversals, reduce the number of split municipalities, and/or increase compactness scores—showing that the Enacted Plans’ partisan gerrymandering and racial vote dilution affected every Senate and House district (as well as every congressional district) and confirming that relief from those constitutional violations must extend statewide to every district and cluster (except, again, for the one-district clusters mandated by the *Stephenson/Dickson* algorithm).

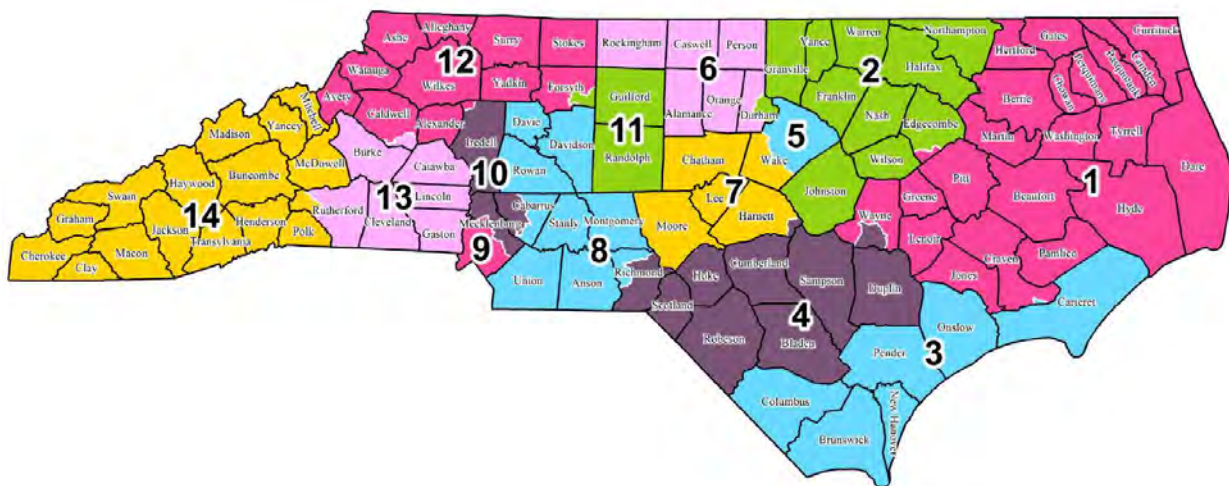
157. Second, Plaintiffs offer their Optimized Maps as remedial maps for the Court’s consideration. Although North Carolina law presumptively allows the General Assembly two weeks to enact its own remedial maps, N.C. Gen. Stat. § 120-2.4(a), it is quite possible that the General Assembly will not timely enact remedial maps that fully remedy the Enacted Plans’ constitutional violations. Plaintiffs respectfully submit that their Optimized Maps—by showing what is possible, consistent with state law and traditional and neutral districting principles—provide the benchmark against which other remedial plans should be measured. Most tellingly, under each of the three Optimized Maps, both political parties have a realistic opportunity to capture half or more of the districts if their candidates can garner half or more of the votes

statewide—which is precisely the key feature that all of the General Assembly’s Enacted Plans lack. To the extent the General Assembly does not timely adopt remedial maps that remedy the constitutional violations in the Enacted Plans as well as the Optimized Maps would, the Court should order that the 2022 elections proceed under the Optimized Maps.

A. Plaintiffs’ Optimized Congressional Map.

158. Figure 4 depicts the Optimized Congressional Map. Exhibit D provides a larger version of the Optimized Congressional Map; Exhibit G provides the detailed locational data that the Optimized Congressional Map reflects. *See* Feldman Aff., Exs. D, G.

Figure 4: Optimized Congressional Map



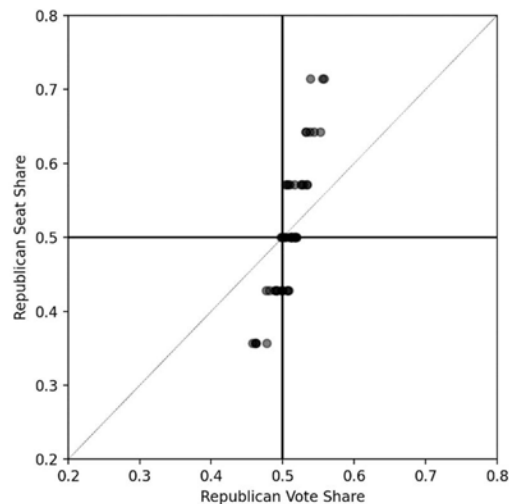
159. In the Optimized Congressional Map, neither party has an entrenched advantage. Instead, the party whose candidates earn the most votes statewide has a fair chance to win the most congressional seats. For example, as Table 1 shows, had the votes in the five close elections described above, *supra* ¶ 91, gone to congressional candidates of the same party, the outcomes under the Optimized Congressional Map would have far better reflected each party’s strength in the electorate.

Table 1: Outcomes in 5 Elections in Enacted & Optimized Congressional Maps

Election (margin)	Enacted Congressional Plan	Optimized Congressional Map
2016 Governor (0.2% D win)	10 R, 4 D	7 R, 7 D
2016 Ins. Comm'r (0.8% R win)	10 R, 4 D	8 R, 6 D
2020 President (1.4% R win)	10 R, 4 D	6 R, 8 D
2020 Chief Justice (0.0% R win)	10 R, 4 D	6 R, 8 D
2020 Atty General (0.3% D win)	10 R, 4 D	6 R, 8 D

160. Figure 5 illustrates how the Optimized Congressional Map preserves equal opportunities for both political parties. The x-axis depicts the Republican share of the major-party vote in every partisan statewide general election conducted in 2020, 2018, 2016, 2014, and 2012. The y-axis depicts the share of seats that the vote share would be expected to generate under the Optimized Congressional Map.

Figure 5: Vote Share & Seat Share in Optimized Congressional Map



161. As Figure 5 shows, if the major-party vote is almost evenly divided, 50% to 50%, the Optimized Congressional Map will likely result in a 7-to-7 split of North Carolina's congressional seats, or in one major party winning 43% (6 seats) and the other 57% (8 seats) of North Carolina's congressional seats. If the statewide vote shifts significantly in favor of

Democratic candidates, so that Democratic candidates win by five to seven points, Democrats are likely to win eight or nine (57% or 64%) of North Carolina’s congressional seats. If the statewide vote shifts significantly in favor of Republican candidates, so that Republican candidates win by five to seven points, Republicans are likely to win eight or nine (57% or 64%) of North Carolina’s congressional seats.

162. The Optimized Congressional Map also creates districts that are more compact than the Enacted Congressional Plan. Compactness is commonly measured in two ways. The Polsby-Popper score—which this Complaint has discussed above—measures a district’s jaggedness by comparing its area to the length of its perimeter. A circle gets a perfect Polsby-Popper score of 1.0. The Reock score measures a district’s elongation by comparing its area to the area of the smallest circle that could circumscribe the district. Again, a circle gets a perfect Reock score. The average Polsby-Popper score of the 14 districts in the Optimized Congressional Map is 0.38. The same figure for the Enacted Congressional Plan is 0.30. The average Reock score of the 14 districts in the Optimized Congressional Map is 0.47. The same figure for the Enacted Congressional Plan is 0.42.

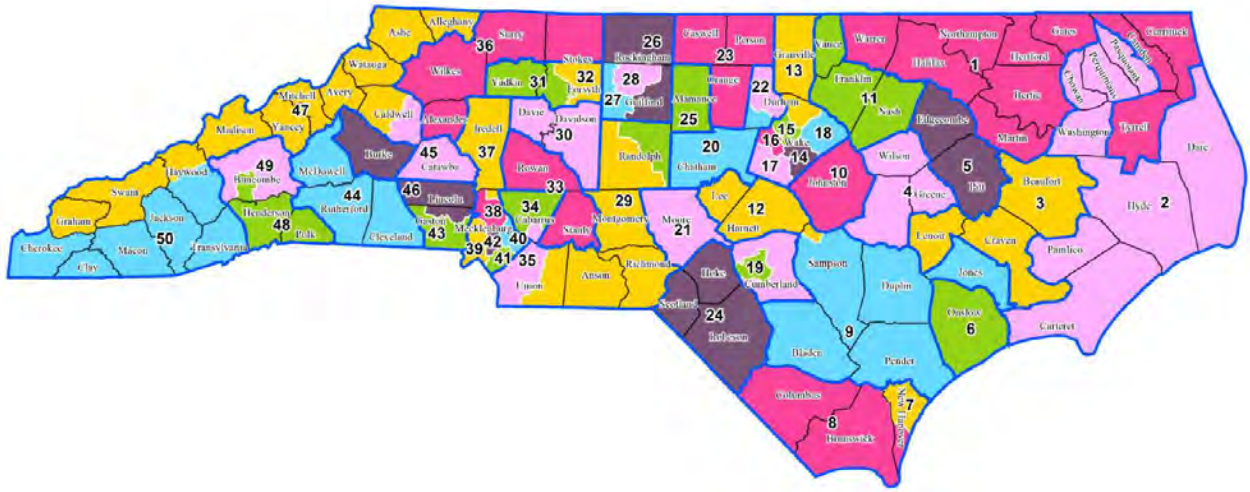
163. The Optimized Congressional Map avoids unnecessary municipal splits. The Optimized Congressional Map splits 27 municipalities into 58 parts. The Enacted Congressional Plan splits 42 municipalities into 90 parts.

164. The Optimized Congressional Map also avoids unlawfully packing and cracking black voters—and thereby depriving black voters an equal opportunity to nominate and elect their preferred candidates. In the Optimized Congressional Map, black voters would have that opportunity in four districts, compared with only two districts in the Enacted Congressional Plan.

B. Plaintiffs’ Optimized Senate Map.

165. Figure 6 depicts the Optimized Senate Map. Exhibit E provides a larger version of the Optimized Senate Map; Exhibit H provides the detailed locational data that the Optimized Senate Map reflects. *See* Feldman Aff., Exs. E, H.

Figure 6: Optimized Senate Map



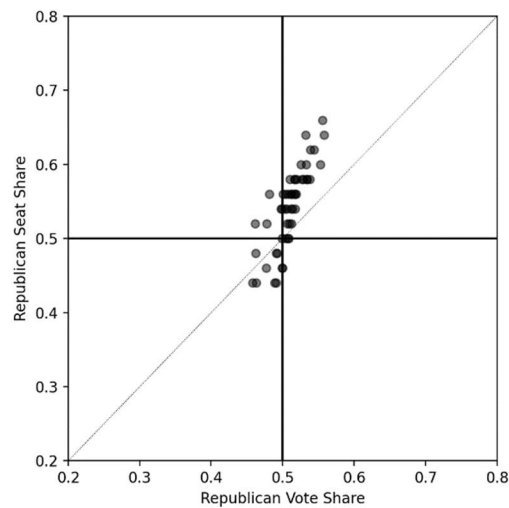
166. In the Optimized Senate Map, neither party has an entrenched advantage. Instead, the party whose candidates earn the most votes statewide has a fair chance to win the most Senate seats. For example, as Table 2 shows, had the votes in the five close elections described above, *supra* ¶ 91, gone to Senate candidates of the same party, the outcomes under the Optimized Senate map would have far better reflected each party’s strength in the electorate.

Table 2: Outcomes in 5 Elections in Enacted & Optimized Senate Maps

Election (margin)	Enacted Senate Plan	Optimized Senate Map
2016 Governor (0.2% D win)	30 R, 20 D	23 R, 27 D
2016 Ins. Comm’r (0.8% R win)	28 R, 22 D	28 R, 22 D
2020 President (1.4% R win)	30 R, 20 D	25 R, 25 D
2020 Chief Justice (0.0% R win)	28 R, 22 D	23 R, 27 D
2020 Atty General (0.3% D win)	29 R, 21 D	25 R, 25 D

167. Figure 7 illustrates how the Optimized Senate Map preserves equal opportunity for both political parties. The x-axis depicts the Republican share of the major-party vote in every partisan statewide general election conducted in 2020, 2018, 2016, 2014, and 2012. The y-axis depicts the share of seats that the vote share would be expected to generate under the Optimized Senate Map.

Figure 7: Vote Share & Seat Share in Optimized Senate Map



168. As Figure 7 shows, if the major-party vote is almost evenly divided, 50% to 50%, the Optimized Senate Map will likely result in Democrats winning between 44% (22 seats) and 54% (27 seats) of North Carolina’s Senate seats. If the statewide vote shifts significantly in favor of Democratic candidates, so that Democratic candidates win by five to seven points, Democrats are likely to win between 44% (22 seats) and 56% (28 seats) of North Carolina’s Senate seats. If the statewide vote shifts significantly in favor of Republican candidates, so that Republican candidates win by five to seven points, Republicans are likely to win between 58% (29 seats) and 64% (32 seats) of North Carolina’s Senate seats.

169. The Optimized Senate Map also creates districts that are more compact than the Enacted Senate Plan. The average Polsby-Popper score of the 50 districts in the Optimized Senate Map is 0.37. The same figure for the districts in the Enacted Senate Plan is 0.34. The average Reock score of the 50 districts in the Optimized Senate Map is 0.43. The same figure for the Enacted Senate Plan is 0.42.

170. Similarly, the Optimized Senate Map avoids unnecessary county traversals. The Optimized Senate Map traverses county boundaries only 89 times. The Enacted Senate Plan traverses county boundaries 97 times, creating eight unnecessary county traversals.

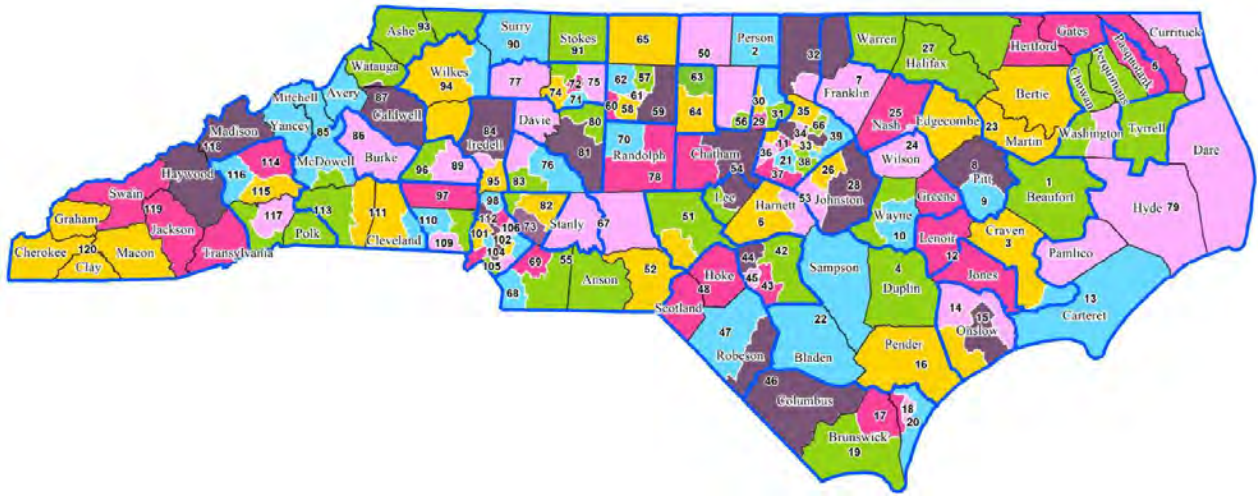
171. The Optimized Senate Map avoids unnecessary municipal splits. The Optimized Senate Map splits 51 municipalities into 125 parts. The Enacted Senate Plan splits 65 municipalities into 152 parts.

172. The Optimized Senate Map also avoids unlawfully packing and cracking black voters. In the Optimized Senate Map, black voters retain the opportunity to nominate and elect their candidates of choice in 13 districts, compared with just 10 in the Enacted Senate Plan.

C. Plaintiffs' Optimized House Map.

173. Figure 8 depicts the Optimized House Map. Exhibit F provides a larger version of the Optimized House Map; Exhibit I provides the detailed locational data that the Optimized House Map reflects. *See* Feldman Aff., Exs. F, I.

Figure 8: Optimized House Map



174. In the Optimized House Map, neither party has an entrenched advantage. Instead, the party whose candidates earn the most votes statewide has a fair chance to win the most House seats. For example, as Table 3 shows, had the votes in the five close elections described above, *supra* ¶ 91, gone to House candidates of the same party, the outcomes under the Optimized House Map would have far better reflected each party’s strength in the electorate.

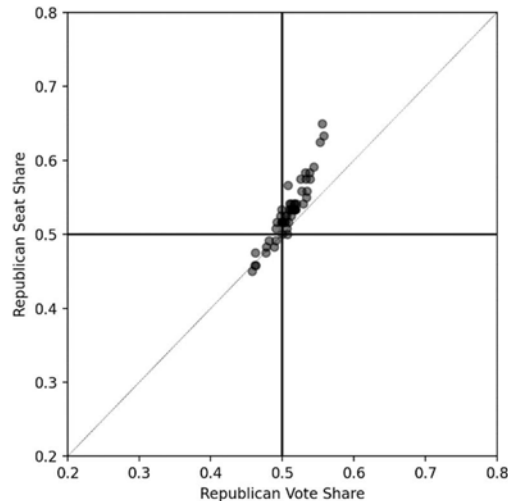
Table 3: Outcomes in 5 Elections in Enacted & Optimized House Maps

Election (margin)	Enacted House Plan	Optimized House Map
2016 Governor (0.2% D win)	70 R, 50 D	62 R, 58 D
2016 Ins. Comm’r (0.8% R win)	70 R, 50 D	63 R, 57 D
2020 President (1.4% R win)	70 R, 50 D	60 R, 60 D
2020 Chief Justice (0.0% R win)	68 R, 52 D	60 R, 60 D
2020 Atty General (0.3% D win)	69 R, 51 D	62 R, 58 D

175. Figure 9 illustrates how the Optimized House Map preserves equal opportunity for both political parties. The x-axis depicts the Republican share of the major-party vote in every partisan statewide general election conducted in 2020, 2018, 2016, 2014, and 2012. The y-axis

depicts the share of seats that the vote share would be expected to generate under the Optimized House Plan.

Figure 9: Vote Share & Seat Share in Optimized House Map



176. As Figure 9 shows, if the major-party vote is almost evenly divided, 50% to 50%, the Optimized House Map will likely result in Democrats winning between 47% (56 seats) and 50% (60 seats) of North Carolina’s House seats. If the statewide vote shifts significantly in favor of Democratic candidates, so that Democratic candidates win by five to seven points, Democrats are likely to win between 52% (62 seats) and 54% (65 seats) of North Carolina’s House seats. If the statewide vote shifts significantly in favor of Republican candidates, so that Republican candidates win by five to seven points, Republicans are likely to win between 54% (65 seats) and 58% (70 seats) of North Carolina’s House seats.

177. The Optimized House Map also creates districts that are more compact than the Enacted House Plan. The average Polsby-Popper score of the 120 districts in the Optimized House Map is 0.41. The same figure for the districts in the Enacted House Plan is 0.35. The average Reock score of the 120 districts in the Optimized House Map is 0.47. The same figure for the Enacted House Plan is 0.44.

178. Similarly, the Optimized House Map avoids unnecessary county traversals. The Optimized House Plan traverses county boundaries only 66 times. The Enacted House Plan traverses county boundaries 69 times—creating three unnecessary county boundary traversals.

179. The Optimized House Map avoids unnecessary municipal splits. The Optimized House Map splits 71 municipalities into 201 parts. The Enacted House Plan splits 112 municipalities into 292 parts.

180. The Optimized House Map also avoids unlawfully “packing” and “cracking” black voters. In the Optimized House Map, black voters retain the opportunity to nominate and elect their candidates of choice in 36 districts (compared with 31 in the Enacted House Plan).

VI. The Court Can and Should Enter Preliminary Relief Necessary to Preserve the Rights of Millions of North Carolinian Voters.

181. North Carolina’s primary election for congressional and legislative offices is currently scheduled for March 8, 2022, with second primaries set for April 26 (for North Carolina offices) or May 17, 2022 (for federal offices).³⁷ Any candidate seeking nomination for a congressional or legislative office currently must file a notice of candidacy between December 6 and December 17, 2021.³⁸

182. The North Carolina State Board of Elections administers these elections, and its officials are among the Defendants here.

183. North Carolina is an outlier on the 2022 election calendar. Forty-eight of the 50 States have 2022 primaries scheduled in May or later. Nineteen States have scheduled 2022

³⁷ *Running for Office*, N.C. State Board of Elections, <https://www.ncsbe.gov/candidates/running-office>.

³⁸ *See id.*; *see also* N.C. Gen. Stat. § 163-106.2.

primaries for August or later. Only North Carolina and Texas are contemplating a March primary, and Texas’s may well be postponed.

184. The General Assembly’s choice to retain a March 2022 primary is particularly striking given how the COVID-19 pandemic delayed the release of the census data required for redistricting. As early as February 24, 2021, North Carolina State Board of Elections Executive Director Karen Brinson Bell advised the General Assembly that it needed to delay the congressional and legislative primaries from March 8 to May 3 and the second primaries to July 12, given that the COVID-19 pandemic was likely to delay the release of census data.³⁹

185. The General Assembly, however, declined to reschedule the primaries for congressional and legislative offices despite the census delay—even as it did permit municipalities to delay municipal elections.⁴⁰

186. Ultimately, the census data were not released until August 12, 2021. Nevertheless, the General Assembly declined to delay the congressional and legislative primaries.⁴¹

187. Given the General Assembly’s choice to retain an outlier primary schedule, even while enacting redistricting plans that gerrymander by party and dilute voting strength by race,

³⁹ *A Look Back at North Carolina’s Historic 2020 Election & Looking Ahead at 2021*, N.C. State Board of Elections (Feb. 24, 2021) <https://www.ncleg.gov/documentsites/committees/House2021-21/02-24-21/House%20Elections%20Committee%20Presentation%202-24-2021%20FINALv2.pdf>.

⁴⁰ S.B. 722, S.L. 2021-56, 2021-2022 Sess. (N.C. 2021); Bryan Anderson, *N Carolina Elections Head: Delay ’21 City Races, ’22 Primary*, Associated Press (Feb. 23, 2021), <https://apnews.com/article/redistricting-municipal-elections-north-carolina-elections-fdc23aca0ba9981944a944923937f46c>.

⁴¹ The General Assembly’s refusal to delay the primaries persisted into the fall. Representative Zack Hawkins asked Chair Hall at an October 5 hearing whether there was any consideration begin given to moving the March 2022 primary to May 2022 to allow the Committees time to consider public comment and develop the maps; Chair Hall, however, responded that the General Assembly would not consider moving the primaries. See N.C. General Assembly, *House Redistricting Committee Hearing*, YouTube (Oct. 5, 2021), https://www.youtube.com/watch?v=9UsiS_6rIUA (1:49:03–1:50:30) (exchange between Representative Hawkins and Chair Hall)).

prompt preliminary relief is necessary to safeguard the voting rights of the millions of North Carolinians harmed by the Enacted Plans. North Carolinians’ constitutional rights should not be held hostage to an aberrational election calendar. This Court has the authority to, and should, order the necessary relief.

188. The Court should begin by enjoining Defendants, and anyone associated with them, from preparing for, administering, or conducting any elections (including the 2022 primary and general elections) under the Enacted Congressional Plan, the Enacted Senate Plan, the Enacted House Plan, or any other congressional or legislative redistricting plan that violates the North Carolina State Constitution. *E.g.*, *Stephenson I*, 355 N.C. at 359–60, 562 S.E.2d at 382; *see* N.C. Gen. Stat. § 120-2.3. If the North Carolina State Board of Elections proceeds with the March 2022 primary election as scheduled based on the Enacted Plans, Plaintiffs will be forced to vote under maps that constitute unconstitutional partisan gerrymanders and that dilute their votes based on race.

189. The Court should further order that, to the extent that the General Assembly does not, within two weeks from the date of an order granting such relief, enact redistricting plans that remedy the violations found herein as fully as Plaintiffs’ Optimized Maps, then Defendants shall prepare for, administer, and conduct the 2022 primary and general elections under the Optimized Maps. Although North Carolina law presumptively allows the General Assembly two weeks to enact its own remedial maps, N.C. Gen. Stat. § 120-2.4(a), North Carolina courts can—indeed, must—select their own maps to the extent the General Assembly fails to fully remedy constitutional violations that the courts have identified. *E.g.*, *Stephenson I*, 355 N.C. at 385, 562 S.E.2d at 398; *Stephenson II*, 357 N.C. at 304, 582 S.E.2d at 249.

190. The Court should also, to the extent it deems necessary, delay the 2022 primary elections. While Plaintiffs believe that the Court can expeditiously hold proceedings on the unlawfulness of the Enacted Plans and on the Optimized Maps, the Court may determine that a modest delay in the primaries is appropriate. One option would be to delay the primaries until May 3, 2022, as the North Carolina State Board of Elections originally recommended. That would still leave North Carolina with the Nation’s second-earliest primaries (after only Texas). Because the statewide general election does not occur until November 8, 2022, that delay will not interfere with the administration of the general election. The Court should also delay and/or shorten the candidate filing period for the 2022 congressional and legislative elections for a reasonable time after the adoption of remedial maps.

191. North Carolina courts have previously granted similar relief: When necessary to avoid elections proceeding under unlawful maps, North Carolina courts have both delayed primary elections and deferred candidate filing periods.⁴²

192. Particularly given the General Assembly’s failure to take reasonable steps to accommodate the 2022 primary schedule to the COVID-19 pandemic, the Court should not

⁴² *Harper v. Lewis*, No. 19-CVS-012667, slip op. at 18 (N.C. Super. Ct. Oct. 28, 2019) (preliminarily enjoining legislative defendants and State Board of Elections “from preparing for or administering the 2020 primary and general elections” and retaining jurisdiction “to move the primary date for the congressional elections, or all of the State’s 2020 primaries, including for offices other than Congressional Representatives, should doing so become necessary to provide effective relief”); *Harper*, No. 19-CVS-012667, slip op. at 2 (N.C. Super. Ct. Nov. 20, 2019) (enjoining filing period for the 2020 congressional primary elections “until further order” in order to “allow the Court sufficient opportunity” to review the remedial maps recently enacted by the General Assembly); *see also Harper*, No. 19-CVS-012667, slip op. at 1 (N.C. Super. Ct. Dec. 2, 2019) (setting aside the injunction delaying the filing period for the congressional elections and ordering that period to begin by directing the State Board to “immediately accept for filing any notices of candidacy” from congressional candidates).

hesitate to delay the 2022 primary election and/or shorten the candidate filing period to the extent the Court deems doing so necessary.

193. Further, given the General Assembly’s failure to take reasonable steps to ensure that the 2022 elections take place under lawful and fair maps, the Court should order that, if any citizen has established his or her residence in a Senate or House district modified by any remedial redistricting plan approved by this Court, then that citizen shall be qualified to serve if elected to that office, notwithstanding the requirements of Sections 6 and 7 of Article II of the North Carolina State Constitution providing that each Senator and Representative, at the time of their election, shall have resided “in the district for which he is chosen for one year immediately preceding his election.” *See, e.g., Covington v. North Carolina*, 267 F. Supp. 3d 664, 668 (M.D.N.C. 2017) (entering similar order). Such relief is necessary to ensure that candidates from both parties are not unfairly disadvantaged by the need to implement remedial maps to remedy the constitutional defects in the Enacted Plans.

COUNT I⁴³
Unlawful Partisan Gerrymandering in Violation of
the North Carolina State Constitution’s Free Elections Clause,
Article I, Section 5

194. Plaintiffs incorporate paragraphs 1–193 as if fully set forth herein.

195. Article I, Section 10, of the North Carolina State Constitution provides that “[a]ll elections shall be free.” This clause is known as the Free Elections Clause.

196. The North Carolina Supreme Court gives the North Carolina State Constitution “a liberal interpretation in favor of its citizens with respect to those provisions which were designed

⁴³ As to each Count, Plaintiffs pursue claims exclusively under the North Carolina State Constitution and state law, irrespective of protections that federal law might independently provide.

to safeguard the liberty and security of the citizens.” *Corum v. Univ. of N.C. ex rel. Bd. of Governors*, 330 N.C. 761, 783, 413 S.E.2d 276, 290 (1992). Thus, the North Carolina Supreme Court has “recognized a direct action under the State Constitution against state officials for violations of rights guaranteed by the Declaration of Rights.” *Id.*

197. In particular, the Free Elections Clause “guarantees that all elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the People and that this is a fundamental right of North Carolina citizens, a compelling governmental interest, and a cornerstone of our democratic form of government.” *Common Cause*, 2019 WL 4569584, at *2.

198. The Free Elections Clause dates to the North Carolina Declaration of Rights of 1776 and is “one of the clauses that makes the North Carolina State Constitution more detailed and specific than the federal Constitution in the protection of the rights of its citizens.” *Common Cause*, 2019 WL 4569584, at *109 (citing *Corum*, 330 N.C. at 783, 413 S.E.2d at 290). “The federal Constitution contains no similar counterpart to this declaration, although several other states’ constitutions do.” *Id.* In other states, parallel constitutional provisions modeled on the English Bill of Rights have been broadly construed to protect the right to “an equally effective power to select the [candidate] of [one’s] choice.” *League of Women Voters v. Commonwealth*, 178 A.3d 737, 793, 814 (Pa. 2018).

199. Fair districting maps implement the Free Elections Clause’s guarantee by allowing each major political party—Republican and Democratic—to fairly translate its voting strength into representation. By contrast, “extreme partisan gerrymandering ... is contrary to the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Common Cause*, 2019 WL 4569584, at *110. That is because such gerrymanders do “not fairly and truthfully ascertain the will of the people”: “Voters

are not freely choosing their representatives. Rather, representatives are choosing their voters”—and “it is the will of the map drawers,” not the voters, “that prevails.” *Id.*

200. A redistricting plan violates the Free Elections Clause when it “specifically and systematically design[s] the contours of the election districts” in a way that makes it “nearly impossible for the will of the people ... to be expressed through their votes.” *Common Cause*, 2019 WL 4569584, at *112. When a law implicates the Free Elections Clause, “it is the effect of the act, and not the intention of the Legislature, which renders it void.” *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 225–26 (1875); see *Common Cause*, 2019 WL 4569584, at *112–13. Here, moreover, the General Assembly knew about and intended the partisan gerrymandering that the Enacted Plans yield.

201. The Enacted Plans constitute an extreme partisan gerrymander and thereby violate the Free Elections Clause. The Enacted Plans crack some groups of Democratic voters, while packing others. And even when the Democratic Party’s candidates earn more votes, those votes will not reliably translate into more seats. Under any likely election scenario, even if Democratic candidates win a substantial majority of statewide votes, they will not win more than 4 Congressional seats (of 14), more than 23 state Senate seats (of 50), or more than 58 state House seats (of 120). Meanwhile, few seats are competitive; most seats are “safe” Republican seats, while a smaller number are “safe” Democratic seats. Map-drawers, not voters, have determined the results of elections in North Carolina for the next decade.

202. No compelling or legitimate state interest justifies the extreme partisan gerrymandering reflected in the Enacted Plans.

203. These violations of the Free Elections Clause harm NCLCV and its members in the manner described above. *Supra* ¶¶ 11–13. These violations also harm many Individual Plaintiffs,

as well as NCLCV members, in the districts and/or clusters where they reside (by packing or cracking Democratic voters and/or preventing them from electing their candidates of choice) and statewide (by unfairly preventing Democratic voters across North Carolina from translating their votes into representation in Congress and the General Assembly).

COUNT II
Unlawful Partisan Gerrymandering in Violation of the
North Carolina State Constitution’s Equal Protection Clause,
Article I, Section 19

204. Plaintiffs incorporate paragraphs 1–193 as if fully set forth herein.

205. Article I, Section 19, of the North Carolina State Constitution provides in relevant part that “[n]o person shall be denied the equal protection of the laws” and that no person “shall ... be subjected to discrimination by the State because of race, color, religion, or national origin.” This clause is known as the Equal Protection Clause.

206. North Carolina’s Equal Protection Clause affords broader protections for voting rights than the U.S. Constitution’s equal protection provision. *See Common Cause*, 2019 WL 4569584, at *113 (citing *Stephenson I*, 355 N.C. at 377–81 & n.6, 562 S.E.2d at 393–96 & n.6; *Blankenship v. Bartlett*, 363 N.C. 518, 522–28, 681 S.E.2d 759, 762–66 (2009)); *Evans v. Cowan*, 122 N.C. App. 181, 184, 468 S.E.2d 575, 557–78, *aff’d*, 345 N.C. 177, 477 S.E.2d 926 (1996).

207. “The right to vote is one of the most cherished rights in our system of government.” *Blankenship v. Bartlett*, 363 N.C. 518, 522, 681 S.E.2d 759, 762 (2009). Hence, North Carolina’s Equal Protection Clause protects “[t]he right to vote on equal terms in representative elections,” *id.*, as well as the right to “substantially equal voting power.” *Stephenson I*, 355 N.C. at 379, 562 S.E.2d at 394.

208. “Generally, partisan gerrymandering runs afoul of the State’s obligation to provide all persons with equal protection of the law,” because “a partisan gerrymander treats individuals

who support candidates of one political party less favorably than individuals who support candidates of another party.” *Common Cause*, 2019 WL 4569584, at *113.

209. A plaintiff may prevail on a partisan-gerrymandering claim under North Carolina’s Equal Protection Clause by showing that a predominant purpose of state officials in drawing district maps was to entrench their party in power and that resulting plans in fact substantially dilute the votes of voters favoring rival parties. *Common Cause*, 2019 WL 4569584, at *114. If plaintiffs make such a showing, the State must provide a “legitimate, non-partisan justification” for its map. *Id.* A “discriminatory purpose may often be inferred from the totality of the relevant facts,” even when no discriminatory purpose is “express or appear[s] on the face of the statute.” *Common Cause*, 2019 WL 4569584, at *114 (quotation marks omitted).

210. The Enacted Plans violate the Equal Protection Clause by intentionally entrenching in power the political party favored by the map-drawers (the Republican Party) while diluting the votes of voters favoring the rival party (the Democratic Party) and preventing voters of the rival party from translating their votes into representation in Congress and the General Assembly.

211. No compelling or legitimate nonpartisan interest justifies the extreme partisan gerrymandering in the Enacted Plans.

212. These violations of the Equal Protection Clause harm NCLCV and its members in the manner described above. *Supra* ¶¶ 11–13. These violations also harm many Individual Plaintiffs, as well as NCLCV members, in the districts and/or clusters where they reside (by packing or cracking Democratic voters and/or preventing them from electing their candidates of choice) and statewide (by unfairly preventing Democratic voters across North Carolina from translating their votes into representation in Congress and the General Assembly).

COUNT III
Unlawful Partisan Gerrymandering in Violation of the
North Carolina State Constitution’s Free Speech and Free Assembly Clauses,
Article I, Sections 12 and 14

213. Plaintiffs incorporate paragraphs 1–193 as if fully set forth herein.

214. Article I, Section 12, of the North Carolina State Constitution provides in relevant part: “The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.” This clause is known as the Free Assembly Clause.

215. Article I, Section 14, of the North Carolina State Constitution provides in relevant part: “Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained.” This clause is known as the Free Speech Clause.

216. North Carolina’s Free Assembly and Free Speech Clauses afford broader protections than the federal First Amendment. *Evans*, 122 N.C. App. at 184, 468 S.E.2d at 577; *Common Cause*, 2019 WL 4569584, at *118.

217. The Free Assembly and Free Speech Clauses protect the right of voters to participate in the political process in order to further the common good, to express political views, to affiliate with or support a political party, and to cast a vote. Voting for a candidate of one’s choice is core political speech protected by the Free Assembly and Free Speech Clauses. *Common Cause*, 2019 WL 4569584, at *119.

218. “The government unconstitutionally burdens speech where it renders disfavored speech *less effective*, even if it does not ban such speech outright. The government may not restrict citizens’ ‘ability to effectively exercise’ their free speech rights.” *Common Cause*, 2019 WL 4569584, at *121 (quoting *Heritage Vill. Church & Missionary Fellowship, Inc. v. State*, 40 N.C. App. 429, 451, 253 S.E.2d 473 (1979), *aff’d*, 299 N.C. 399, 263 S.E.2d 726 (1980)).

219. A law that discriminates between individuals’ speech based on its content or viewpoint without adequate justification impermissibly burdens protected expression. *State v. Bishop*, 368 N.C. 869, 875, 787 S.E.2d 814, 818–19 (2016). Discrimination may be evident from “the plain text of a statute, or the animating impulse behind it, or the lack of any plausible explanation besides distaste for the subject matter or message.” *Common Cause*, 2019 WL 4569584, at *121 (quotation marks omitted). A districting plan “need not explicitly mention any particular viewpoint to be impermissibly discriminatory.” *Id.*

220. “Just as voting is a form of protected expression, banding together with likeminded citizens” to participate in politics “is a form of protected association.” *Id.* “[F]or elections to express the popular will, the right to assemble and consult for the common good must be guaranteed.” *Id.* (quoting John V. Orth, *The North Carolina State Constitution* 48 (1995)).

221. The Enacted Plans violate the Free Assembly and Free Speech Clauses by diluting the voting power of voters who seek to vote for and associate with the disfavored political party and by impairing the effectiveness of political speech and expression because of the partisan content of that speech. Moreover, voters who seek to speak in favor of and associate with the disfavored political party—by working to elect that party’s candidates—cannot effectively do so because of the extreme partisan gerrymanders reflected in the Enacted Plans. And voters’ engagement with, and interest in, North Carolina’s elections will decline—because mapmakers have effectively determined the results.

222. No compelling or legitimate state interest justifies the extreme partisan gerrymandering reflected in the Enacted Plans.

223. These violations of the Free Assembly and Free Speech Clauses harm NCLCV and its members in the manner described above. *Supra* ¶¶ 11–13. These violations also harm many

Individual Plaintiffs, as well as NCLCV members, by diluting their voting power in the districts and/or clusters where they reside (by packing or cracking Democratic voters and/or preventing them from electing their candidates of choice) and statewide (by diluting the voting power of Democratic voters with whom many Individual Plaintiffs seek to associate, by burdening many Individual Plaintiffs’ ability to associate with other Democratic voters and to work to elect Democratic candidates, and by undermining many Individual Plaintiffs’ efforts to engage other voters on matters of public concern in order to further the common good).

COUNT IV
Unlawful Racial Vote Dilution in Violation of the
North Carolina State Constitution’s Free Elections Clause,
Article I, Section 5

224. Plaintiffs incorporate paragraphs 1–193 as if fully set forth herein.

225. The Free Elections Clause “guarantees that all elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the People and that this is a fundamental right of North Carolina citizens, a compelling governmental interest, and a cornerstone of our democratic form of government.” *Common Cause*, 2019 WL 4569584, at *2.

226. A redistricting plan violates the Free Elections Clause when it “specifically and systematically design[s] the contours of the election districts” in a way that makes it “nearly impossible for the will of the people ... to be expressed through their votes.” *Common Cause*, 2019 WL 4569584, at *112.

227. In particular, a redistricting plan violates the Free Elections Clause when it unnecessarily dilutes the voting power of North Carolina citizens on account of race—that is, when the plan provides voters from one racial group with less opportunity than other members of the electorate to nominate and elect representatives of their choice. *See Common Cause*, 2019 WL 4569584, at *115 (“A state may not dilute the strength of a person’s vote to give weight to other

interests.” (quoting *Texfi Indus., Inc. v. City of Fayetteville*, 301 N.C. 1, 13, 269 S.E.2d 142, 150 (1980)).

228. When a law implicates the Free Elections Clause, “it is the effect of the act, and not the intention of the Legislature, which renders it void.” *Van Bokkelen*, 73 N.C. at 225–26; *see Common Cause*, 2019 WL 4569584, at *112–13. Here, moreover, the General Assembly knew about and intended the racial vote dilution that the Enacted Plans yield.

229. The Enacted Plans violate the Free Elections Clause by establishing district boundaries that pack and crack black voters into certain districts and make it more difficult for black voters to nominate and elect the candidates of their choice.

230. Alternative redistricting plans exist that would have avoided the racial vote dilution that the Enacted Plans yield while also complying with the other redistricting requirements set forth in the North Carolina State Constitution.

231. No compelling or legitimate state interest justifies the racial vote dilution reflected in the Enacted Plans.

232. These violations of the Free Elections Clause harm NCLCV and its members in the manner described above. *Supra* ¶¶ 11–13. These violations also harm many Individual Plaintiffs, as well as NCLCV members, in the districts and/or clusters where they reside (by packing or cracking black voters and/or preventing them from nominating and electing their candidates of choice) and statewide (by diluting the voting power of black voters across North Carolina).

COUNT V
Unlawful Racial Vote Dilution in Violation of the
North Carolina State Constitution’s Equal Protection Clause,
Article I, Section 19

233. Plaintiffs incorporate paragraphs 1–193 as if fully set forth herein.

234. North Carolina’s Equal Protection Clause provides that “[n]o person shall be denied the equal protection of the laws” and that no person “shall ... be subjected to discrimination by the State because of race, color, religion, or national origin.”

235. “The right to vote is one of the most cherished rights in our system of government,” and North Carolina’s Equal Protection Clause protects “[t]he right to vote on equal terms in representative elections.” *Blankenship*, 363 N.C. at 522, 681 S.E.2d at 762. “The right to vote on equal terms in representative elections—a one-person, one-vote standard—is a fundamental right.” *Id.*

236. A “discriminatory purpose may often be inferred from the totality of the relevant facts,” even when no discriminatory purpose is “express or appear[s] on the face of the statute.” *Common Cause*, 2019 WL 4569584, at *114 (quotation marks omitted). “[I]ntentionally targeting a particular race’s access to the franchise because its members vote for a particular party, in a predictable manner, constitutes discriminatory purpose,” even absent “any evidence of race-based hatred.” *McCrory*, 831 F.3d at 222–23. It is not necessary to show that “any member of the General Assembly harbored racial hatred or animosity toward any minority group.” *Id.* at 233.

237. The Enacted Plans violate the Equal Protection Clause because they were designed to dilute the voting power of North Carolina citizens on account of race—that is, they pack and crack voters from one racial group and provide voters from one racial group with less opportunity than other members of the electorate to nominate and elect candidates of their choice.

238. Alternative redistricting plans exist that would have avoided the racial vote dilution that the Enacted Plans yield while also complying with the other redistricting requirements set forth in the North Carolina State Constitution.

239. The General Assembly acted intentionally in diluting the voting power of black voters by race.

240. No compelling or legitimate state interest justifies the racial vote dilution reflected in the Enacted Plans.

241. These violations of the Equal Protection Clause harm NCLCV and its members in the manner described above. *Supra* ¶¶ 11–13. These violations also harm many Individual Plaintiffs, as well as NCLCV members, in the districts and/or clusters where they reside (by packing or cracking black voters and/or preventing them from nominating and electing their candidates of choice) and statewide (by diluting the voting power of black voters across North Carolina).

COUNT VI

Violation of the North Carolina State Constitution’s Whole County Provisions, Article II, Sections 3(3) and 5(3), *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*

242. Plaintiffs incorporate paragraphs 1–193 as if fully set forth herein.

243. Article II, Section 3(3), of the North Carolina State Constitution provides: “No county shall be divided in the formation of a senate district.” Article II, Section 5(3), of the North Carolina State Constitution provides: “No county shall be divided in the formation of a representative district.” These clauses are known as the Whole County Provisions.

244. In *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*, the North Carolina Supreme Court interpreted the Whole County Provisions to harmonize them with other provisions of federal and state law and required adherence to a specific nine-step algorithm for drawing boundaries for state Senate and House districts. *Stephenson I*, 355 N.C. at 383–84, 562 S.E.2d at 397–98; *see Dickson II*, 368 N.C. at 489–91, 781 S.E.2d at 412–13. Adherence to this algorithm

is mandatory. *See Pender County v. Bartlett*, 361 N.C. 491, 510, 649 S.E.2d 364, 376 (2007), *aff’d sub nom. Bartlett v. Strickland*, 556 U.S. 1 (2009).

245. The Enacted Senate Plan and Enacted House Plan violate the mandatory *Stephenson/Dickson* algorithm and thereby violate the Whole County Provisions of the North Carolina State Constitution.

246. The *Stephenson/Dickson* algorithm requires the General Assembly to “‘combin[e] or group[] the minimum number of whole, contiguous counties necessary to comply with the at or within plus or minus five percent ‘one-person, one-vote’ standard.” *Dickson II*, 368 N.C. at 490, 781 S.E.2d at 413 (quoting *Stephenson*, 355 N.C. at 383). “[W]ithin any such contiguous multi-county grouping, compact districts shall be formed, consistent with the [one-person, one-vote] standard, whose boundary lines do not cross or traverse the “exterior” line of the multi-county grouping.” *Id.* (quoting *Stephenson I*, 355 N.C. at 383–84, 562 S.E.2d at 397 (alteration in original)). “[T]he resulting interior county lines created by any such groupings may be crossed or traversed in the creation of districts within said multi-county grouping but only to the extent necessary to comply with the at or within plus or minus five percent “one-person, one-vote” standard.” *Id.* (quoting *Stephenson I*, 355 N.C. at 384, 562 S.E.2d at 397). The *Stephenson/Dickson* algorithm also requires that districts be compact. Indeed, steps four, five, seven, and nine of the nine-step algorithm consider whether districts are compact. *Id.* at 490–91, 781 S.E.2d at 413.

247. In order to dilute the voting strength of black voters, and to gerrymander in favor of the incumbent Republican Party, the Enacted Plans violate the *Stephenson/Dickson* algorithm, and the Whole County Provisions, by unnecessarily traversing county boundaries and by forming

districts that, because they are drawn to favor Republican interests, are less compact than they could be under a fair map.

248. These violations of the Whole County Provisions and the *Stephenson/Dickson* algorithm harm Plaintiffs by contributing to the unconstitutional partisan gerrymandering and racial vote dilution described above, which harms Plaintiffs in the manner described in Counts I–V.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants, and:

- a. Declare that the Enacted Congressional Plan is unconstitutional and invalid because it violates the rights of Plaintiffs and other North Carolina voters under North Carolina’s Free Elections Clause, Equal Protection Clause, Free Speech Clause, and Free Assembly Clause and that all of its districts are affected by unconstitutional partisan gerrymandering, racial vote dilution, or both.
- b. Declare that the Enacted Senate Plan is unconstitutional and invalid because it violates the rights of Plaintiffs and other North Carolina voters under North Carolina’s Free Elections Clause, Equal Protection Clause, Free Speech Clause, and Free Assembly Clause and that all of its districts are affected by unconstitutional partisan gerrymandering, racial vote dilution, or both.
- c. Declare that the Enacted House Plan is unconstitutional and invalid because it violates the rights of Plaintiffs and other North Carolina voters under North Carolina’s Free Elections Clause, Equal Protection Clause, Free Speech Clause, and Free Assembly Clause and that

all of its districts are affected by unconstitutional partisan gerrymandering, racial vote dilution, or both.

- d. Declare that the Enacted Senate Plan and Enacted House Plan are unconstitutional and invalid because they violate the Whole County Provisions of the North Carolina State Constitution (Article II, Sections 3(3) & 5(3)), as interpreted in the *Stephenson/Dickson* cases, by unnecessarily traversing county lines and by forming districts that are less compact than they could be under a fair map.
- e. Enjoin Defendants, their officers, agents, servants, employees, attorneys, successors in office, and all persons in active concert or participation with them, from preparing for, administering, or conducting any election (including the 2022 primary and general elections) under the Enacted Congressional Plan, the Enacted Senate Plan, or the Enacted House Plan, or any other congressional or legislative redistricting plan that violates the North Carolina State Constitution.
- f. Order that, to the extent that the General Assembly does not, within two weeks after the date of an order from this Court, enact redistricting plans that remedy the constitutional violations found in any of the Enacted Plans as fully as would Plaintiffs' Optimized Maps, then Defendants, their officers, agents, servants, employees, attorneys, successors in office, and all persons in active concert or participation with them shall prepare for, administer, and conduct the 2022 primary and general elections under Plaintiffs' Optimized Maps.
- g. Order that, to the extent that the Court determines that it would otherwise be infeasible to conduct the 2022 primary election as scheduled on March 8, 2022, the Court retains jurisdiction to—in its discretion—delay the 2022 primary election, shorten or eliminate the

two-week period described in Subparagraph (f) above, or order such other relief as the Court deems just and equitable.

- h. Order Defendants, their officers, agents, servants, employees, attorneys, successors in office, and all persons in active concert or participation with them to delay or shorten the candidate-filing period for the 2022 congressional and legislative elections for such time as this Court, by further order, shall direct, and to make such other adjustments to the 2022 election calendar as the Court deems just and equitable.
- i. Declare that any citizen having established his or her residence in a Senate or House district modified by any remedial redistricting plan approved by this Court, as of the closing day of the candidate filing period for the 2022 election in that district, shall be qualified to serve as Senator or Representative if elected to that office, notwithstanding the requirements of Sections 6 or 7 of Article II of the North Carolina State Constitution, which provide that each Senator and Representative, at the time of his or her election, shall have resided “in the district for which he is chosen for one year immediately preceding his election.”
- j. Grant Plaintiffs such other and further relief, including attorney fees and costs, as the Court deems just and equitable.

Dated: November 16, 2021

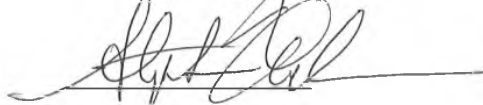
Respectfully submitted,

JENNER & BLOCK LLP

David J. Bradford*
JENNER & BLOCK LLP
353 North Clark Street
Chicago, IL 60654
(312) 923-2975
dbradford@jenner.com

Sam Hirsch*
Jessica Ring Amunson*
Kali Bracey*
Zachary C. Schauf*
Karthik P. Reddy*
Urja Mittal*
JENNER & BLOCK LLP
1099 New York Avenue, NW, Suite 900
Washington, D.C. 20001
(202) 639-6000
shirsch@jenner.com
zschauf@jenner.com

ROBINSON, BRADSHAW & HINSON, P.A.



Stephen D. Feldman
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
(919) 239-2600
sfeldman@robinsonbradshaw.com

Adam K. Doerr
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
(704) 377-2536
adoerr@robinsonbradshaw.com

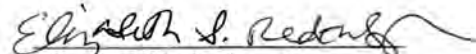
Erik R. Zimmerman
ROBINSON, BRADSHAW & HINSON, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
(919) 328-8800
ezimmerman@robinsonbradshaw.com

Counsel for Plaintiffs

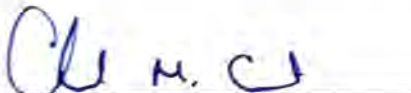
* *Pro hac vice motion forthcoming*

VERIFICATION

I, Elizabeth Redenbaugh, serve as President of the North Carolina League of Conservation Voters Inc. (NCLCV) and hereby state that my organization, NCLCV, is a Plaintiff in the above-titled action, that I have read the contents of the foregoing Verified Complaint, and that the contents therein are true and accurate as they pertain to the NCLCV and the other Plaintiffs (whose party registration, racial, and district information I have reviewed), except to those matters stated on information and belief, which I believe to be true.


Elizabeth Redenbaugh

Sworn and subscribed before me
this the 16th of November, 2021


Notary Public



Name: Christina M. Carter

My commission expires: April 12, 2023

21 CV 015426

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

2021 NOV 16 P 4:28

SUPERIOR COURT DIVISION

CVS

NORTH CAROLINA LEAGUE OF CONSERVATION
VOTERS, INC.; HENRY M. MICHAUX, JR.; DANDRIELLE
LEWIS; TIMOTHY CHARTIER; TALIA FERNÓS;
KATHERINE NEWHALL; R. JASON PARSLEY; EDNA
SCOTT; ROBERTA SCOTT; YVETTE ROBERTS; JEREANN
KING JOHNSON; REVEREND REGINALD WELLS;
YARBROUGH WILLIAMS, JR.; REVEREND DELORIS L.
JERMAN; VIOLA RYALS FIGUEROA; and COSMOS
GEORGE,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in his official capacity as
Chair of the House Standing Committee on Redistricting;
SENATOR WARREN DANIEL, in his official capacity as Co-
Chair of the Senate Standing Committee on Redistricting and
Elections; SENATOR RALPH E. HISE, JR., in his official
capacity as Co-Chair of the Senate Standing Committee on
Redistricting and Elections; SENATOR PAUL NEWTON, in
his official capacity as Co-Chair of the Senate Standing
Committee on Redistricting and Elections; REPRESENTATIVE
TIMOTHY K. MOORE, in his official capacity as Speaker of
the North Carolina House of Representatives; SENATOR
PHILIP E. BERGER, in his official capacity as President Pro
Tempore of the North Carolina Senate; THE STATE OF
NORTH CAROLINA; THE NORTH CAROLINA STATE
BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official
capacity as Chairman of the North Carolina State Board of
Elections; STELLA ANDERSON, in her official capacity as
Secretary of the North Carolina State Board of Elections; JEFF
CARMON III, in his official capacity as Member of the North
Carolina State Board of Elections; STACY EGGERS IV, in his
official capacity as Member of the North Carolina State Board of
Elections; TOMMY TUCKER, in his official capacity as
Member of the North Carolina State Board of Elections; and
KAREN BRINSON BELL, in her official capacity as Executive
Director of the North Carolina State Board of Elections,

Defendants.

PLAINTIFFS'
MOTION FOR
PRELIMINARY
INJUNCTION

NOW COME Plaintiffs, by and through counsel, and respectfully move this Court, pursuant to Rule 7(b) and Rule 65 of the North Carolina Rules of Civil Procedure, for entry of an order granting a preliminary injunction. Plaintiffs show the Court as follows:

1. This is an action for declaratory and injunctive relief to prevent Defendants State of North Carolina, North Carolina State Board of Elections, Anderson, Carmon, Eggers, Tucker, and Bell (“SBE Defendants”) from preparing for, administering, or conducting elections under unconstitutional districting plans for Congress, Senate, and House devised by Defendants Hall, Daniel, Hise, Newton, Moore, and Berger (“Legislative Defendants”) and enacted by the General Assembly on November 4, 2021 (the “Enacted Plans”). Absent a prohibitory injunction, elections will proceed under maps that the General Assembly crafted to effect unconstitutional partisan gerrymanders that effectively guarantee one party—the Republican Party—a majority of seats in Congress, the North Carolina Senate, and the North Carolina House of Representatives, even if voters prefer the other party. The voting rights of millions of North Carolinians are at stake. And unless this Court enters an injunction, Defendants’ actions will irreparably and permanently harm Plaintiffs by depriving them of their rights under the Free Elections Clause, Equal Protection Clause, Free Speech Clause, and Free Assembly Clause of the North Carolina State Constitution.
2. The Verified Complaint in this action has been filed contemporaneously with this Motion on this day, November 16, 2021.
3. Plaintiffs have standing to bring this action and to assert the legal claims therein.
4. Plaintiffs seek a preliminary injunction prohibiting SBE Defendants—as well as their officers, agents, servants, employees, attorneys, successors in office, and all persons in active concert or participation with them—from preparing for, administering, or

conducting the March 8, 2022, primary elections and any subsequent elections for Congress, the North Carolina Senate, or the North Carolina House of Representatives using the Enacted Plans.

5. Plaintiffs are likely to succeed in demonstrating that the Enacted Plans violate the North Carolina State Constitution because the Enacted Plans constitute an unlawful partisan gerrymander in violation of the Free Elections Clause, Equal Protection Clause, Free Speech Clause, and Free Assembly Clause of the North Carolina State Constitution, as set forth in Counts I, II, and III of Plaintiffs' Verified Complaint.¹
6. Absent a preliminary injunction, Plaintiffs are likely to suffer irreparable harm from Defendants' constitutional violations, which will also irreparably harm millions of North Carolina voters who seek to associate with and support their candidates of choice.
7. In addition to entering the above-described injunction, the Court should order the following relief, for reasons more fully described in Plaintiffs' Verified Complaint:
 - a. To the extent that the General Assembly does not, within two weeks from the date of this Court's order entering a preliminary injunction, adopt districting plans that remedy the constitutional violations found in the Enacted Plans as fully as would the remedial maps laid out in Plaintiffs' Verified Complaint (identified therein as the "Optimized Maps"), then the 2022 primary elections and the 2022 general election for Congress, the North Carolina Senate, and the North Carolina House of Representatives shall be conducted under the Optimized Maps.

¹ Plaintiffs are not seeking preliminary relief at this time based on Counts IV–VI of their Verified Complaint.

- b. To the extent that the Court determines that it would otherwise be infeasible to conduct the aforementioned 2022 primary elections as scheduled on March 8, 2022, with constitutionally compliant districting plans, then the Court retains jurisdiction to—in its discretion—delay the 2022 primary elections for Congress, the North Carolina Senate, and the North Carolina House of Representatives, shorten or eliminate the two-week period described in Subparagraph (a) above, or order such other relief as the Court deems just and equitable.
 - c. The candidate-filing period for the 2022 primary elections for Congress, the North Carolina Senate, and the North Carolina House of Representatives shall be delayed until such dates as this Court may by order provide.
 - d. If any citizen has established his or her residence in a North Carolina Senate or House district modified by any remedial redistricting plan approved by this Court, as of the closing day of the candidate filing period for the 2022 election in that district, that citizen shall be qualified to serve as Senator or Representative if elected to that office, notwithstanding the requirements of Sections 6 or 7 of Article II of the North Carolina State Constitution, which provide that each Senator and Representative, at the time of his or her election, shall have resided “in the district for which he is chosen for one year immediately preceding his election.”
 - e. Grant Plaintiffs such other and further relief as the Court deems just and equitable.
8. Pursuant to N.C. Gen. Stat. § 1A-1, Rule 57, Plaintiffs request a prompt hearing on this motion.

WHEREFORE, Plaintiffs request that this Court grant their request for a preliminary injunction.

Dated: November 16, 2021

Respectfully submitted,


JENNER & BLOCK LLP

David J. Bradford*
JENNER & BLOCK LLP
353 North Clark Street
Chicago, IL 60654
(312) 923-2975
dbradford@jenner.com

Sam Hirsch*
Jessica Ring Amunson*
Kali Bracey*
Zachary C. Schauf*
Karthik P. Reddy*
Urja Mittal*
JENNER & BLOCK LLP
1099 New York Avenue, NW, Suite 900
Washington, D.C. 20001
(202) 639-6000
shirsch@jenner.com
zschauf@jenner.com

* *Pro hac vice motion forthcoming*

ROBINSON, BRADSHAW & HINSON P.A.



Stephen D. Feldman
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
(919) 239-2600
sfeldman@robinsonbradshaw.com

Adam K. Doerr
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
(704) 377-2536
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
ROBINSON, BRADSHAW & HINSON, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
(919) 328-8800
ezimmerman@robinsonbradshaw.com

Counsel for Plaintiffs

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

Docket No. _____

REBECCA HARPER; AMY CLARE
OSEROFF; DONALD RUMPH; JOHN
ANTHONY BALLA; RICHARD R. CREWS;
LILY NICOLE QUICK; GETTYS COHEN
JR.; SHAWN RUSH; JACKSON THOMAS
DUNN, JR.; MARK S. PETERS; KATHLEEN
BARNES; VIRGINIA WALTERS BRIEN;
DAVID DWIGHT BROWN,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN
HIS OFFICIAL CAPACITY AS CHAIR OF
THE HOUSE STANDING COMMITTEE
ON REDISTRICTING; SENATOR
WARREN DANIEL, IN HIS OFFICIAL
CAPACITY AS CO-CHAIR OF THE
SENATE STANDING COMMITTEE ON
REDISTRICTING AND ELECTIONS;
SENATOR RALPH HISE, IN HIS
OFFICIAL CAPACITY AS CO-CHAIR OF
THE SENATE STANDING COMMITTEE
ON REDISTRICTING AND ELECTIONS;
SENATOR PAUL NEWTON, IN HIS
OFFICIAL CAPACITY AS CO-CHAIR OF
THE SENATE STANDING COMMITTEE
ON REDISTRICTING AND ELECTIONS;
SPEAKER OF THE NORTH CAROLINA
HOUSE OF REPRESENTATIVES
TIMOTHY K. MOORE; PRESIDENT PRO
TEMPORE OF THE NORTH CAROLINA
SENATE PHILIP E. BERGER; THE
NORTH CAROLINA STATE BOARD OF
ELECTIONS; DAMON CIRCOSTA, IN
HIS OFFICIAL CAPACITY AS
CHAIRMAN OF THE NORTH

COMPLAINT

(Three-Judge Court Pursuant to
N.C. Gen. Stat. § 1-267.1)

CAROLINA STATE BOARD OF ELECTIONS; STELLA ANDERSON, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; JEFF CARMON III, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; STACY EGGERS IV, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; TOMMY TUCKER, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendants.

Plaintiffs, complaining of Defendants, say and allege:

INTRODUCTION

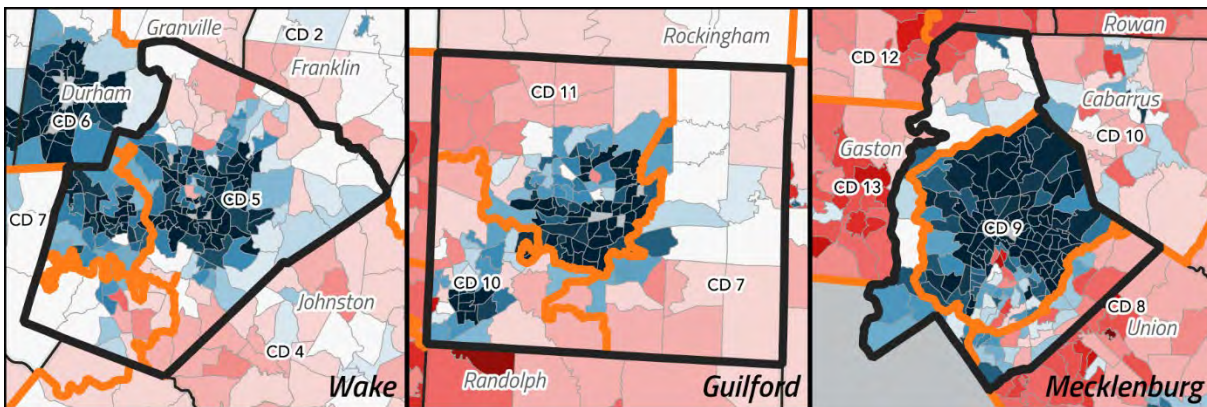
1. Partisan gerrymandering, where partisan mapmakers manipulate district boundaries from behind a computer to maximize their own party’s advantage and guarantee the outcome of elections before anyone casts a ballot, is incompatible with “North Carolinians’ fundamental rights guaranteed by the North Carolina Constitution.” Order on Inj. Relief, *Harper v. Lewis*, No. 19-CVS-012667 (“*Harper I*”), at 15. It violates the Free Elections Clause’s guarantee that elections shall be “conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at 7 (citing *Common Cause v. Lewis*, 18-CVS-014001, slip op. at 298-307). It “runs afoul of the North Carolina Constitution’s guarantee that no person shall be denied the equal protection of the laws.” *Id.* at 8 (citing *Common Cause v. Lewis*, 18-CVS-014001, slip op. at 307-17). And it is irreconcilable with the “important guarantees in the North Carolina Constitution of the freedom of speech and the right of the people in our State to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.” *Id.* at 10-11 (citing *Common Cause v. Lewis*, 18-CVS-014001, slip op. at 317-31).

2. In 2019, a three-judge panel of this Court held in *Harper I* that the same Plaintiffs here were likely to prevail on the merits of their claims that North Carolina’s “2016 congressional districts are extreme partisan gerrymanders in violation of the North Carolina Constitution’s Free Elections Clause, Art. I, § 10; Equal Protection Clause, Art. I, § 19; and Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14.” *Id.* at 14. The Court enjoined the Legislative Defendants and State Board Defendants from administering the 2020 primary and general elections for Congress using these unconstitutional districts, which were intentionally designed to entrench a partisan advantage of 10 Republicans and 3 Democrats in

this closely divided state. *Id.* at 13. It later directed that North Carolina’s 2020 congressional elections be conducted under a remedial map enacted just weeks before the December 2, 2019 candidate filing period. Order Lifting Inj., *Harper I*, at 1.

3. Following the 2020 decennial census, from which North Carolina gained an additional congressional seat, Legislative Defendants recently enacted a new congressional map. But rather than adhere to the *Harper I* Court’s admonition that extreme partisan gerrymanders unconstitutionally deprive millions of North Carolinians of fundamental rights, Legislative Defendants enacted another extreme and brazen partisan gerrymander. Like the 2016 congressional map (the “2016 Plan”), the new districts enacted this year (the “2021 Plan”) will entrench an overwhelming partisan advantage for Republicans.

4. While Legislative Defendants did not so openly admit to enacting an extreme partisan gerrymander this time, the results speak for themselves: The 2021 Plan flagrantly dilutes Democratic votes in large part by trisecting each of the three most heavily Democratic counties in the state—Wake, Guilford, and Mecklenburg.



5. The 2021 Plan packs North Carolina’s Democratic strongholds in Raleigh, Durham and Cary combined, and Charlotte into three congressional districts. And it cracks the State’s remaining Democratic voters across the remaining districts to ensure an overwhelming

majority of safe Republican seats. The result is as intended: A map that produces 10 safe Republican seats, 3 safe Democratic seats, and 1 competitive district.

6. As the *Harper I* Court explained in invalidating the 2016 Plan, extreme partisan gerrymandering “entrench[es] politicians’ power,” “evinces a fundamental distrust of voters by serving the self-interest of political parties over the public good,” and “dilute[s] and devalue[s] votes of some citizens compared to others” in violation of the North Carolina Constitution. Order on Inj. Relief, *Harper I*, at 7. The new map, like its 2016 predecessor, violates the fundamental constitutional rights of North Carolinians. It should meet the same fate as the unconstitutional 2016 Plan, and Plaintiffs will promptly file a motion for a preliminary injunction. This Court should enjoin use of the 2021 Plan immediately, enjoin any further intentional dilution of the voting power of citizens based on their political views or party affiliation, and order a new, constitutional map for use in the 2022 primary and general elections.

7. Plaintiffs here, who are also the plaintiffs in *Harper I*, have filed a motion in *Harper I* seeking leave under Rule 15(d) to file a supplemental complaint challenging the 2021 Plan on the same grounds set forth in this Complaint. The motion for leave has not been acted upon by the *Harper I* Court, which is presently composed of only a single judge (due to one retirement and one recusal), and Legislative Defendants have taken the position that Plaintiffs’ claims against the 2021 Plan should be filed in a new case. While Plaintiffs believe that their proposed supplemental complaint in *Harper I* should be allowed, they are commencing this action in light of the fast-approaching candidate filing period to ensure that some three-judge trial court will timely adjudicate their constitutional claims, including their forthcoming motion for a preliminary injunction.

PARTIES

A. Plaintiffs

8. Plaintiff Amy Clare Oseroff is a retired teacher residing in Greenville, North Carolina. Ms. Oseroff's residence was located within Congressional District 1 under the 2016 Plan and remains in District 1 under the 2021 Plan. Ms. Oseroff is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

9. Plaintiff Rebecca Harper is a real estate agent residing in Cary, North Carolina. Ms. Harper's residence was located within Congressional District 2 under the 2016 Plan and is now located within District 6 under the 2021 Plan. Ms. Harper is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

10. Plaintiff Donald Rumph is an Army and Air Force combat veteran and retired registered nurse residing in Greenville, North Carolina. Mr. Rumph's residence was located within Congressional District 3 under the 2016 Plan and is now located within District 1 under the 2021 Plan. Mr. Rumph is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

11. Plaintiff John Anthony Balla is a digital marketing strategist residing in Raleigh, North Carolina. Mr. Balla's residence was located within District 4 under the 2016 Plan and is now located within District 5 under the 2021 Plan. Mr. Balla is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

12. Plaintiff Richard R. Crews is a retired stockbroker residing in Newland, North Carolina. Mr. Crews's residence was located within Congressional District 5 under the 2016 Plan and is now located within District 14 under the 2021 Plan. Mr. Crews is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

13. Plaintiff Lily Nicole Quick is a homemaker residing in Greensboro, North

Carolina. Ms. Quick’s residence was located within Congressional District 6 under the 2016 Plan and is now located within District 7 under the 2021 Plan. Ms. Quick is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

14. Plaintiff Gettys Cohen Jr. is a dentist residing in Smithfield, North Carolina. Dr. Cohen’s residence was located within Congressional District 7 under the 2016 Plan and is now located within District 4 under the 2021 Plan. Dr. Cohen is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

15. Plaintiff Shawn Rush is part owner of a marketing firm, a Meals on Wheels organizer, and Mayor Pro Tem of East Salisbury residing in East Spencer, North Carolina. His residence was located within Congressional District 8 under the 2016 Plan and is now located within District 10 under the 2021 Plan. Mr. Rush is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

16. Plaintiff Jackson Thomas Dunn, Jr. is a retired attorney and law professor residing in Charlotte, North Carolina, within Congressional District 9 under both the 2016 and 2021 Plans. Mr. Dunn is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

17. Plaintiff Mark S. Peters is a retired physician assistant residing in Fletcher, North Carolina. Mr. Peters’s residence was located within Congressional District 10 under the 2016 Plan and is now located within District 14 under the 2021 Plan. Mr. Peters is registered as an unaffiliated voter and has consistently voted for Democratic candidates for the U.S. House of Representatives.

18. Plaintiff Kathleen Barnes is the owner of a small publishing company residing in Brevard, North Carolina. Ms. Barnes’s residence was located within Congressional District 11

under the 2016 Plan and is now located within District 14 under the 2021 Plan. Ms. Barnes is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

19. Plaintiff Virginia Walters Brien is a sales manager residing in Charlotte, North Carolina. Ms. Brien’s residence was located within Congressional District 12 under the 2016 Plan and is now located within District 9 under the 2021 Plan. Ms. Brien is a registered unaffiliated voter who has consistently voted for Democratic candidates for the U.S. House of Representatives.

20. Plaintiff David Dwight Brown is a retired computer systems analyst residing in Greensboro, North Carolina. Mr. Brown’s residence was located within Congressional District 13 under the 2016 Plan and is now located within District 11 under the 2021 Plan. Mr. Brown is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives.

B. Defendants

21. Defendant Destin Hall is a member of the North Carolina House of Representatives and currently serves as the Chair of the House Standing Committee on Redistricting. Mr. Hall is sued in his official capacity only.

22. Defendant Warren Daniel is a member of the North Carolina Senate and currently serves as a co-Chair of the Senate Standing Committee on Redistricting and Elections. Mr. Daniel is sued in his official capacity only.

23. Defendant Ralph E. Hise, Jr. is a member of the North Carolina Senate and currently serves as a co-Chair of the Senate Standing Committee on Redistricting and Elections. Mr. Hise is sued in his official capacity only.

24. Defendant Paul Newton is a member of the North Carolina Senate and currently

serves as a co-Chair of the Senate Standing Committee on Redistricting and Elections. Mr. Newton is sued in his official capacity only.

25. Defendant Timothy K. Moore is the Speaker of the North Carolina House of Representatives. Mr. Moore is sued in his official capacity only.

26. Defendant Philip E. Berger is the President Pro Tempore of the North Carolina Senate. Mr. Berger is sued in his official capacity only.

27. Defendant North Carolina State Board of Elections is an agency responsible for the regulation and administration of elections in North Carolina.

28. Defendant Damon Circosta is the Chair of the North Carolina State Board of Elections. Mr. Circosta is sued in his official capacity only.

29. Defendant Stella Anderson is the Secretary of the North Carolina State Board of Elections. Ms. Anderson is sued in her official capacity only.

30. Defendant Jeff Carmon III is a member of the North Carolina State Board of Elections. Mr. Carmon is sued in his official capacity only.

31. Defendant Stacy Eggers IV is a member of the North Carolina State Board of Elections. Mr. Eggers is sued in his official capacity only.

32. Defendant Tommy Tucker is a member of the North Carolina State Board of Elections. Mr. Tucker is sued in his official capacity only.

JURISDICTION AND VENUE

33. This Court has jurisdiction of this action pursuant to Articles 26 and 26A of Chapter 1 of the General Statutes.

34. Under N.C. Gen. Stat. § 1-81.1, the exclusive venue for this action is the Wake County Superior Court.

35. Under N.C. Gen. Stat. § 1-267.1, a three-judge court must be convened because

this action challenges the validity of a redistricting plan enacted by the General Assembly.

FACTUAL ALLEGATIONS

A. North Carolina Voters are Closely Divided Politically

36. For more than a decade, North Carolina’s voters have been closely divided between the Republican and Democratic Parties. Democrats have won three out of four gubernatorial elections since 2008 while Republican presidential and U.S. Senate candidates have each won the state three out of four times, nearly all in close races.

37. The most recent election cycle illustrates just how evenly divided this state is. In 2020, the Republican nominee for President narrowly defeated the Democratic nominee by a margin of 49.9% to 48.6%. The gubernatorial race was also close, with the Democratic nominee defeating the Republican nominee by a margin of 51.5% to 47.0%. And the race for Attorney General was closer still: the Democratic nominee defeated the Republican nominee by a margin of 50.1% to 49.9%. These razor-thin margins in statewide races reflect what everyone familiar with North Carolina knows—this is a closely divided state.

38. Nevertheless, due to consistent, systematic, and egregious gerrymandering by the Republican-controlled General Assembly, the popular will has not been reflected in the state’s congressional delegation for over a decade.

B. National Republican Party Officials Target North Carolina for Partisan Gerrymandering Prior to the 2010 Elections

39. In the years leading up to the 2010 decennial census, national Republican leaders undertook a sophisticated and concerted effort to gain control of state governments in 13 critical swing states such as North Carolina. The Republican State Leadership Committee (RSLC) code-named the plan “the REDistricting Majority Project” or “REDMAP.” REDMAP’s goal was to “control[] the redistricting process in . . . states [that] would have the greatest impact on

determining how both state legislative and congressional district boundaries would be drawn” after the 2010 census. The RSLC’s REDMAP website explained that fixing these district lines in favor of Republicans would “solidify conservative policymaking at the state level and maintain a Republican stronghold in the U.S. House of Representatives for the next decade.”

40. North Carolina was a key REDMAP “target state.” REDMAP aimed to flip both chambers of the North Carolina General Assembly from Democratic to Republican control.

41. To spearhead its efforts in North Carolina, the RSLC enlisted the most influential conservative donor in North Carolina, Art Pope. Together, the RSLC and Pope targeted 22 races in the North Carolina House and Senate. Pope helped create a new non-profit organization called “Real Jobs NC” to finance spending on the races, and the RSLC donated \$1.25 million to this new group. Pope himself made significant contributions; in total, Pope, his family, and groups backed by him spent \$2.2 million on the 22 targeted races. This represented three-quarters of the total spending by all independent groups in North Carolina on the 2010 state legislative races.

42. The money was well spent. Republicans won 18 of the 22 races the RSLC targeted, giving Republicans control of both the House and Senate for the first time since 1870.

C. Republican Mapmakers Create the 2011 Plan from Party Headquarters with the Intent to Advantage Republicans and Disadvantage Democrats

43. Following the 2010 election, the House and Senate each established redistricting committees that were jointly responsible for preparing a congressional redistricting plan. Representative David Lewis, in his capacity as the Senior Chair of the House Redistricting Committee, and Senator Robert Rucho, in his capacity as Senior Chair of the Senate Redistricting Committee, were responsible for developing the proposed congressional districting plan (the “2011 Plan”).

44. The House and Senate Redistricting Committees engaged Dr. Thomas Hofeller,

who also served on a REDMAP redistricting team, to draw the 2011 Plan. Dr. Hofeller and his team drew the 2011 Plan at the North Carolina Republican Party headquarters in Raleigh using mapmaking software licensed by the North Carolina Republican Party.

45. Legislative Defendants did not make Dr. Hofeller available to Democratic members of the General Assembly during the 2011 redistricting process, nor did Dr. Hofeller communicate with any Democratic members in developing the 2011 Plan.

46. Representative Lewis and Senator Rucho, both Republicans, orally instructed Dr. Hofeller regarding the criteria he should follow in drawing the new plan. Dr. Hofeller later testified that the Committee Chairs instructed him to “create as many districts as possible in which GOP candidates would be able to successfully compete for office.” Deposition of Thomas Hofeller (“Hofeller Dep.”) at 123:2-23 (Jan. 24, 2017). Following these instructions, Dr. Hofeller sought to “minimize the number of districts in which Democrats would have an opportunity to elect a Democratic candidate.” Hofeller Dep. at 127:19-21. Dr. Hofeller consulted “political voting history” as reflected in “past election results,” which he testified is “the most important information in trying to give one party or the other a partisan advantage in the redistricting process,” because it is “the best predictor of how a particular geographic area is likely to vote” in future elections. Hofeller Dep. at 14:7-15:14, 16:8-12, 132:14-134:13.

47. Dr. Hofeller sought to minimize the opportunities for Democratic voters to elect Democratic representatives by using past election data to concentrate as many Democratic voters as possible into Congressional Districts 1, 4, and 12. *See* Hofeller Dep. at 127:19-128:6. In his testimony, Dr. Hofeller admitted that the resulting 2011 Plan diminished the “opportunity to elect a Democratic candidate in the districts in which [he] increased Republican voting strength.” *See* Hofeller Dep. at 128:17-21.

48. The scheme worked. North Carolina conducted two congressional elections using the 2011 Plan, both of which handed outsized power to Republican congressional candidates. In 2012, Republicans won a *minority* of the statewide congressional vote but won 9 of the 13 seats.

	North Carolina State-Wide Votes in U.S. House Elections		Representatives Elected to U.S. House for North Carolina	
Year	Percentage of <i>Votes</i> Received by Democratic Congressional Candidates	Percentage of <i>Votes</i> Received by Republican Congressional Candidates	Percentage of <i>Seats</i> Won by Democratic Congressional Candidates	Percentage of <i>Seats</i> Won by Republican Congressional Candidates
2012	51%	49%	31% (4 of 13)	69% (9 of 13)
2014	46%	54%	23% (3 of 13)	77% (10 of 13)

D. Legislative Defendants Create the 2016 Plan with the Explicit Partisan Goal of Guaranteeing a 10-3 Republican Advantage in Congressional Seats

49. On February 5, 2016, a three-judge federal district court struck down the 2011 Plan as racially gerrymandered in violation of the Fourteenth Amendment’s Equal Protection Clause. *See Harris v. McCrory*, 159 F. Supp. 3d 600 (M.D.N.C. 2016). The Court ordered the General Assembly to draw a new congressional map.

50. At that time, Republicans held supermajority control of both chambers of the North Carolina General Assembly, and thus had the power to draw the new congressional district lines unilaterally. Representative Lewis and Senator Rucho again took charge of the mapmaking process, and again engaged Dr. Hofeller to draw the remedial congressional plan.

51. On February 9, 2016, in a meeting at Dr. Hofeller’s home, Representative Lewis and Senator Rucho gave Dr. Hofeller oral instructions regarding the criteria he should use in drawing the remedial plan, directing him to use political data to create the new districts. This political data included precinct-level election results from all statewide elections, excluding presidential elections, dating back to January 1, 2008. Representative Lewis and Senator Rucho

specifically instructed Dr. Hofeller to use this partisanship data to draw a map that would ensure 10 Republican seats and 3 Democratic seats. *See* Deposition of Representative David Lewis (“Lewis Dep.”) at 162:24-163:7, 166:13-169:1 (Jan. 26, 2017); Hofeller Dep. at 175:19-23, 178:14-20, 188:19-190:2.

52. Working on his personal computer, Dr. Hofeller sought to achieve Representative Lewis and Senator Rucho’s partisan objectives through the use of a partisanship formula he created to score every voting tabulation district (VTD) in North Carolina. Dr. Hofeller’s partisanship formula measured the average Democratic and Republican vote share in each VTD across the following seven statewide elections: the 2008 Gubernatorial, U.S. Senate, and Commissioner of Insurance elections; the 2010 U.S. Senate election; the 2012 Gubernatorial and Commissioner of Labor elections; and the 2014 U.S. Senate election.

53. Dr. Hofeller testified that he used the averaged results from these seven elections “to get a pretty good cross section of what the past vote had been,” Hofeller Dep. at 212:16-213:9, and “[t]o give [him] an indication of the two-party partisan characteristics of VTDs,” Deposition of Thomas Hofeller (“Hofeller Dep. II”) at 267:5-6 (Feb. 10, 2017). Dr. Hofeller said that “he had drawn numerous plans in the state of North Carolina over decades,” and that in his experience, “the underlying political nature of the precincts in the state does not change no matter what race you use to analyze it.” Trial Testimony of Thomas Hofeller (“Hofeller Testimony”) at 525:6-10, *Common Cause v. Rucho*, No. 1:16-CV-1026, 1:16-CV-1164, 2018 WL 4214334 (M.D.N.C. Sept. 4, 2018), *vacated by Rucho v. Common Cause*, 139 S. Ct. 2484 (2019); *see* Hofeller Dep. at 149:5-18. “So once a precinct is found to be a strong Democratic precinct,” Dr. Hofeller explained, “it’s probably going to act as a strong Democratic precinct in every subsequent election. The same would be true for Republican precincts.” Hofeller

Testimony at 525:14-17.

54. As he drew the district lines in the Maptitude software program, Dr. Hofeller color-coded voting districts (“VTD”) on his screen based on his partisanship formula. Dr. Hofeller admitted that he used this partisan color-coding to guide him in assigning VTDs “to one congressional district or another,” using red to show VTDs where voter history data was “the most Democratic” and dark blue for areas that were “the most Republican.” Hofeller Dep. at 102:14-104:22, 106:23-107:1. He further admitted that he similarly used his partisanship formula to assess the partisan performance of draft plans as a whole. Hofeller Dep. II at 282:1-7.

55. Dr. Hofeller testified that he conveyed to Representative Lewis his assessment of the partisan performance of districts for which the partisan result wasn’t “really obvious.” Hofeller Dep. II at 290:17-25. Representative Lewis admitted in sworn testimony that “[n]early every time” he reviewed Dr. Hofeller’s draft plans, Representative Lewis assessed the plans’ partisan performance using the results from North Carolina’s 2014 Senate race between Senator Thom Tillis and former Senator Kay Hagan, because it was “in [his] mind the closest political race with equally matched candidates who spent about the same amount of money.” Lewis Dep. at 63:9-64:17.

56. Both Representative Lewis and Dr. Hofeller admitted that Dr. Hofeller had nearly finished drawing the final 2016 Plan before the House and Senate Redistricting Committees ever met, and that Dr. Hofeller pre-drew the plan with express partisan intent. Dr. Hofeller recalled that “the plan was actually brought into a form to be presented to the legislature long before [February] 16th.” Hofeller Dep. at 175:10-18. Indeed, on February 10, 2016, Dr. Hofeller met with Representative Lewis and Senator Rucho and showed them several draft plans. Lewis Dep. at 58:13-61:17. Representative Lewis visited Dr. Hofeller’s house several more times over the

next few days to review additional draft plans. *Id.* at 73:7-74:7, 77:7-20.

57. The maps Representative Lewis reviewed with Dr. Hofeller over the three days following the February 10 meeting were “near-final versions of the 2016 map” that Representative Lewis intended to submit to the legislature for approval. *Id.* at 77:7-20. Dr. Hofeller and Representative Lewis agreed on a draft plan on either February 12 or 13, 2016. *Id.* That plan was “ultimately adopted with a minor distinction for an incumbency issue.” *Id.* at 77:21-24.

58. On February 12, 2016, after the 2016 Plan was already nearly finished, the Republican leadership of the General Assembly appointed Representative Lewis and Senator Rucho as co-chairs of the newly formed Joint Select Committee on Redistricting (the “Joint Committee”). The Joint Committee consisted of 25 Republicans and 12 Democrats.

59. The Joint Committee held a public hearing on February 15, 2016. But because Dr. Hofeller finished drawing the 2016 Plan before the hearing took place, the final plan did not reflect any public input.

60. At a meeting on February 16, 2016, the Joint Committee adopted a set of criteria (the “2016 Adopted Criteria”) to govern the creation of the 2016 Plan.

61. The Joint Committee adopted “Partisan Advantage” as one official criterion. This criterion required the new plan to preserve Republicans’ existing 10-3 advantage in North Carolina’s congressional delegation. The criterion read as follows:

Partisan Advantage: 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.

62. In explaining this Partisan Advantage criterion, Representative Lewis proposed that the Committee “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.” Joint Comm. Session, Feb. 16, 2016, at 50:6-10.

63. Representative Lewis “acknowledge[d] freely that this would be a political gerrymander.” *Id.* at 48:4-5.

64. The Joint Committee adopted “Political Data” as another criterion, which stated:

Political Data: 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. Data identifying the race of individuals or voters shall not be used in the construction or consideration of districts in the 2016 Contingent Congressional Plan. Voting districts (“VTDs”) should be split only when necessary to comply with the zero deviation population requirements set forth above in order to ensure the integrity of political data.

65. Representative Lewis left no doubt as to how this political data would be used, telling the Joint Committee members he “want[ed] to make clear that to the extent [we] are going to use political data in drawing this map, it is to gain partisan advantage on the map. I want that criteria to be clearly stated and understood.” Joint Comm. Session, Feb. 16, 2016, at 53:24-54:4.

66. The remaining criteria adopted by the Joint Committee were to provide for equal population, to make the districts contiguous, to eliminate the then-current configuration of District 12, to improve the compactness of the existing districts, to keep more counties and VTDs whole than the existing districts, and to avoid pairing incumbents.

67. The Joint Committee adopted the Political Data and Partisan Advantage criteria on a party-line vote. The other criteria were passed on a bipartisan basis. Representative Lewis reassured the Committee that “the criteria that will be available to the mapmaker . . . will only be the criteria that this . . . committee has adopted,” *id.* at 140:8-13, despite knowing that the 2016 Plan was “for the most part finished by the time the criteria were formally adopted by the committee,” Hofeller Dep. at 177:9-14. He later emphasized that “the criteria that this committee

debated and adopted . . . are the criteria that *were used to draw these maps*.” Joint Comm. Session, Feb. 17, 2016, at 43:4-14 (emphasis added).

68. The Joint Committee authorized Representative Lewis and Senator Rucho to engage a consultant to assist the Committee’s Republican leadership in drawing the remedial plan. Representative Lewis and Senator Rucho immediately sent Dr. Hofeller an engagement letter, which he signed the same day. Dr. Hofeller then downloaded the 2016 Plan, which he had completed several days earlier, onto a state legislative computer.

69. Democratic members of the Joint Committee were not allowed to consult with Dr. Hofeller, nor were they allowed access to the state legislative computer on which he downloaded the 2016 Plan.

70. Dr. Hofeller later testified that the 2016 Plan followed the Committee’s Partisan Advantage and Political Data criteria. *See* Hofeller Dep. at 129:14-15.

71. On February 17, 2016, just one day after the Joint Committee adopted the official criteria, Representative Lewis and Senator Rucho presented the 2016 Plan to the Committee. *See* Joint Comm. Session, Feb. 17, 2016, at 11:8-15. During the presentation, Representative Lewis discussed the partisan performance of the proposed districts and asserted that the 2016 Plan would “produce an opportunity to elect ten Republicans members of Congress.” *Id.* at 12:3-7. To prove it, Representative Lewis provided Committee members with spreadsheets showing the partisan performance of the proposed districts in twenty previous statewide elections. *E.g., id.* at 17:4-18:23. The Committee then approved the 2016 Plan on a party-line vote.

72. On February 19, 2016, the North Carolina House of Representatives debated the 2016 Plan. During the debate, Representative Lewis “freely acknowledge[d] that [he] sought partisan advantage.” N.C. House Floor Session, Feb. 19, 2016, at 31:14-17. He defended the

Partisan Advantage criterion by stating: “I think electing Republicans is better than electing Democrats. So I drew this map in a way to help foster what I think is better for the country.” *Id.* at 34:21-23.

73. The North Carolina House and Senate approved the 2016 Plan on February 18 and February 19, 2016, respectively. No Democrat in either chamber voted for the 2016 Plan.

74. In sworn testimony, Senator Rucho confirmed that the 2016 Plan “satisfied” “all criteria,” including the criteria requiring a 10-3 partisan advantage for Republicans. Deposition of Senator Robert A. Rucho (“Rucho Dep.”) 193:24-194:14 (Jan. 25, 2017).

E. The 2016 Plan Achieves Its Intended Effect of Propelling Ten Republican Congressional Candidates to Electoral Victory Every Two Years

75. The 2016 Plan achieved precisely its intended partisan effects—a guaranteed 10-3 Republican advantage in North Carolina’s congressional delegation.

76. In the 2016 elections, Democratic congressional candidates in North Carolina won a combined 47% of the statewide vote, and yet won only 3 of 13 seats (23%).

77. The results were even more striking in 2018. Democrats won a majority of the statewide vote (50.9%, when adjusting for one uncontested race in which Democrats did not field a candidate) but carried only 3 of the 13 seats (23%).

F. A Three-Judge Panel of this Court Enjoins Use of the 2016 Plan as an Extreme Partisan Gerrymander

78. Plaintiffs filed a lawsuit on September 27, 2019, alleging that the 2016 Plan was an extreme partisan gerrymander that violated North Carolina’s Free Elections Clause, Equal Protection Clause, and Free Speech and Assembly Clauses. *See* Compl., *Harper I*, No. 19-CVS-012667. In *Harper I*, Plaintiffs alleged that the 2016 Plan “reflect[ed] an extreme and intentional effort to maximize Republican advantage.” *Id.* ¶ 2. On September 30, 2019, pursuant to N.C. Gen. Stat. § 1-267.1, a three-judge panel was convened.

79. Attempting to evade state-court jurisdiction, Legislative Defendants unsuccessfully removed the case to federal court on October 14, 2019. *See* Notice of Removal, *Harper v. Lewis*, No. 5:19-CV-00452-BO (E.D.N.C. Oct. 14, 2019), ECF No. 5. The federal court promptly granted Plaintiffs’ motion to remand the case to state court. Order Granting Remand at 9, *Harper*, No. 5:19-CV-00452-BO (E.D.N.C. Oct. 22, 2019), ECF No. 33; *see also Common Cause v. Lewis*, 956 F.3d 246 (4th Cir. 2020) (affirming remand in state-legislative challenge).

80. Plaintiffs moved for a preliminary injunction, arguing that they would suffer irreparable harm if they were forced to vote in the 2020 primary and general elections in egregiously gerrymandered congressional districts. The Court agreed and granted the motion for a preliminary injunction on October 28, 2019. Order on Inj. Relief, *Harper I*, at 15.

81. The preliminary injunction ruling resolved two threshold jurisdictional questions: First, the Court rejected Legislative Defendants’ contention that Plaintiffs’ claims presented non-justiciable political questions, holding that “partisan gerrymandering claims specifically present justiciable issues.” *Id.* at 3. Second, the Court rejected Legislative Defendants’ contention that Plaintiffs lacked standing to challenge the 2016 Plan. The Court held that Plaintiffs had standing to challenge the plan because they “have shown a likelihood of ‘a personal stake in the outcome of the controversy’ and a likelihood that the 2016 congressional districts cause them to ‘suffer harm.’” *Id.* at 5 (quoting *Goldston v. State*, 361 N.C. 26, 35, 637 S.E.2d 876, 882 (2006); and *Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640, 642, 669 S.E.2d 279, 281 (2008)).

82. On the merits, the Court reaffirmed its holding in *Common Cause v. Lewis*, 18-CVS-14001, that extreme partisan gerrymandering violates multiple provisions of the North Carolina Constitution. It violates the Free Elections Clause by preventing elections from being

“conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at 7. It violates the Equal Protection Clause by “treat[ing] individuals who support candidates of one political party less favorably than individuals who support candidates of another party.” *Id.* at 8. And it violates the Freedom of Speech and Freedom of Assembly Clauses by diluting the votes of “certain disfavored speakers (e.g., Democratic voters) because of disagreement with the views they express when they vote.” *Id.* at 10.

83. On October 30, 2019, Speaker Moore announced the creation of a joint House and Senate Select Committee to draw a remedial plan. The full House and Senate passed the remedial plan (the “2019 Plan”), this one an 8-5 partisan gerrymander, on straight party-line votes on November 14 and 15, 2019.

84. Legislative Defendants moved for summary judgment in *Harper I* on November 15, arguing that the case was moot and that Plaintiffs must file a new lawsuit to challenge the 2019 Plan. The Court *sua sponte* proceeded to enjoin the filing period for the 2020 congressional primary elections pending review of the remedial map. Order Enjoining Filing Period, *Harper I*, at 1-2.

85. At a hearing on Legislative Defendants’ motion for summary judgment, the Court explained that it had not determined whether the 2019 Plan was constitutional and that it “d[id] not reach th[e] issue” of “whether this action is moot.” *See* Ex. A, at 6. The Court observed that “although one can certainly argue that the process” leading to the enactment of the 2019 Plan “was flawed or that the result is far from ideal,” the “net result” was that the “grievously flawed 2016 congressional map has been replaced.” *Id.* at 7. The Court accordingly determined that it would not invoke its equitable authority to further delay the election. *Id.* at 8. And it expressed “fervent hope that the past 90 days” since the filing of the original complaint in this case would

become “a foundation for future redistricting in North Carolina and that future maps are crafted through a process worthy of public confidence and a process that yields elections that are conducted freely and honestly to ascertain fairly and truthfully the will of the people.” *Id.* at 9.

86. The Court subsequently lifted its injunction of the filing period, but did not conduct any further proceedings or hold that the 2019 Plan was constitutional.

G. Legislative Defendants Create the 2021 Plan with the Overt Goal of Guaranteeing a 10-3-1 Republican Advantage in Congressional Seats

87. In flagrant disregard of the *Harper I* Court’s directive that the General Assembly enact maps that “yield[] elections that are conducted freely and honestly to ascertain fairly and truthfully the will of the people,” Ex. A, at 9, Legislative Defendants replaced the 2019 Plan with yet another extreme partisan gerrymander.

88. The U.S. Census Bureau released data for states to begin redistricting efforts on August 12, 2021. North Carolina gained a congressional seat following the 2020 census after seeing its population grow by 9.5% over the previous decade. Several of the most populous counties in the state have grown even more rapidly over the same period: Wake County grew by 22.6%, Mecklenburg County by 20.3% Durham County by 18.4%, and Guilford by 9.7%. North Carolina’s new congressional map accordingly contains 14 congressional districts.

89. Also on August 12, the House Committee on Redistricting and the Senate Committee on Redistricting and Elections adopted criteria to guide the enactment of new maps. While the adopted criteria provide that “[p]artisan considerations and election results data *shall not* be used in the drawing of districts in the 2021 Congressional, House, and Senate plans,” they freely permitted the use of “local knowledge of the character of communities and connections

between communities,” as well as “[m]ember residence.”¹ Unlike the 2016 adopted criteria, which provided that “[r]easonable efforts shall be made not to divide a county into more than two districts,” the 2021 criteria did not counsel against splitting counties more than twice. The adopted criteria were otherwise materially identical to those used in drawing the 2016 Plan.

90. Over the next two months, Legislative Defendants undertook an opaque and constricted redistricting process that flagrantly flouted the prohibition on partisan considerations.

91. Legislative Defendants gave little notice to North Carolinians on the schedule for public hearings to discuss the redistricting process. The House and Senate redistricting committees waited until September 1 to announce initial public hearings that would be held from September 8 through September 30. And the number of hearings held by these committees was a small fraction of those held during the 2010 redistricting cycle.

92. Worse, Legislative Defendants held public hearings in smaller Republican counties while carefully avoiding Democratic strongholds, including Guilford County which the 2021 Plan splits into three congressional districts. Legislative Defendants also held hearings at far fewer sites compared to the previous cycle: While the House and Senate Committees held public hearings on the redistricting process at 64 different sites in 2011, they held hearings at only 13 sites in 2021. Legislative Defendants offered no options to participate virtually.

93. Legislative Defendants also largely ignored public testimony submitted during these hearings. For example, residents in the Sandhills overwhelmingly asked that their communities be united in one congressional district centered in Cumberland County. But the 2021 Plan entirely disregards this request by dividing the Sandhills communities among three

¹ House Committee on Redistricting & Senate Committee on Redistricting and Elections, Criteria Adopted by the Committees (Aug. 12, 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-12-2021/Criteria.adopted.8.12.pdf>.

different congressional districts, diluting their influence and further inhibiting the ability to coalesce around preferred candidates.

94. While the House and Senate Committees scheduled additional public hearings on October 25 and 26 regarding the proposed maps, they provided only a few days' notice and allowed only 210 North Carolinians to attend. Each attendee, moreover, was given only two minutes to speak.

95. On October 6, legislators began drawing potential maps for consideration by the House and Senate Committees. This map-drawing process, however, entirely ignored the prohibition on partisan data.

96. The House and Senate Committees set up rooms where legislators could draw and submit maps on computers with the assistance of legislative staff. But while Legislative Defendants prohibited partisan data from being uploaded onto these computers, they did not restrict legislators from bringing maps into the room that had been drawn using partisan data and copying those maps onto the computer.

97. When confronted with this obvious loophole that allowed the submission of maps using partisan data, Legislative Defendants asserted in committee meetings that they had no interest in preventing it—ensuring that the House and Senate Committees would receive maps drawn in violation of the adopted criteria.

98. Thus, although the adopted criteria nominally forbade use of partisan data, the 2021 Plan was in fact drawn based on maps that incorporated that very data.

99. The 2021 Plan was voted out of the Senate Committee as Senate Bill 740 on November 1. It was then voted out of the House Committee on November 3.

100. The full Senate and House passed the 2021 Plan on November 2 and November 4,

respectively. The 2021 Plan passed on strict party-line votes.

101. On November 5, Plaintiffs in *Harper I* filed a motion for leave under Rule 15(d) to file a supplemental complaint challenging the 2021 Plan. The Court has not ruled on that motion. Neither Legislative Defendants nor State Board Defendants have opposed the motion to supplement; Legislative Defendants instead have filed a “motion to transfer” the case to a newly-constituted three-judge panel. Because leave in *Harper I* has not been granted, and in light of the fast-approaching election cycle, Plaintiffs have filed this complaint to ensure that they have a venue in which to assert their rights under the North Carolina Constitution as to the 2021 Plan. Swift attention to these claims is warranted so that Plaintiffs are not forced to vote under an unconstitutional map in the forthcoming elections.

H. The 2021 Plan Packs and Cracks Democratic Voters in Every District

102. Unsurprisingly, this process resulted in the General Assembly enacting another extreme partisan gerrymander. Like the 2016 Plan, the 2021 Plan meticulously packs and cracks Democratic voters in every district—without exception.

103. The 2021 Plan trisects each of the three largest Democratic counties in the state—Wake, Guilford, and Mecklenburg.

104. And the 2021 Plan packs Democratic strongholds throughout the state into a handful of districts. The upshot is a map that results in 10 safe Republican seats, 3 safe Democratic seats, and 1 competitive seat—a nearly identical result to the 2016 Plan that produced a 10-3 Republican map in this evenly divided state.

105. As with the 2016 Plan, expert analysis confirms that the 2021 Plan is an intentional, extreme partisan gerrymander that dilutes Democratic votes and prevents Democratic voters from electing candidates of their choice. Dr. Jowei Chen, a professor of political science at the University of Michigan, generated hundreds of nonpartisan simulated maps respecting North

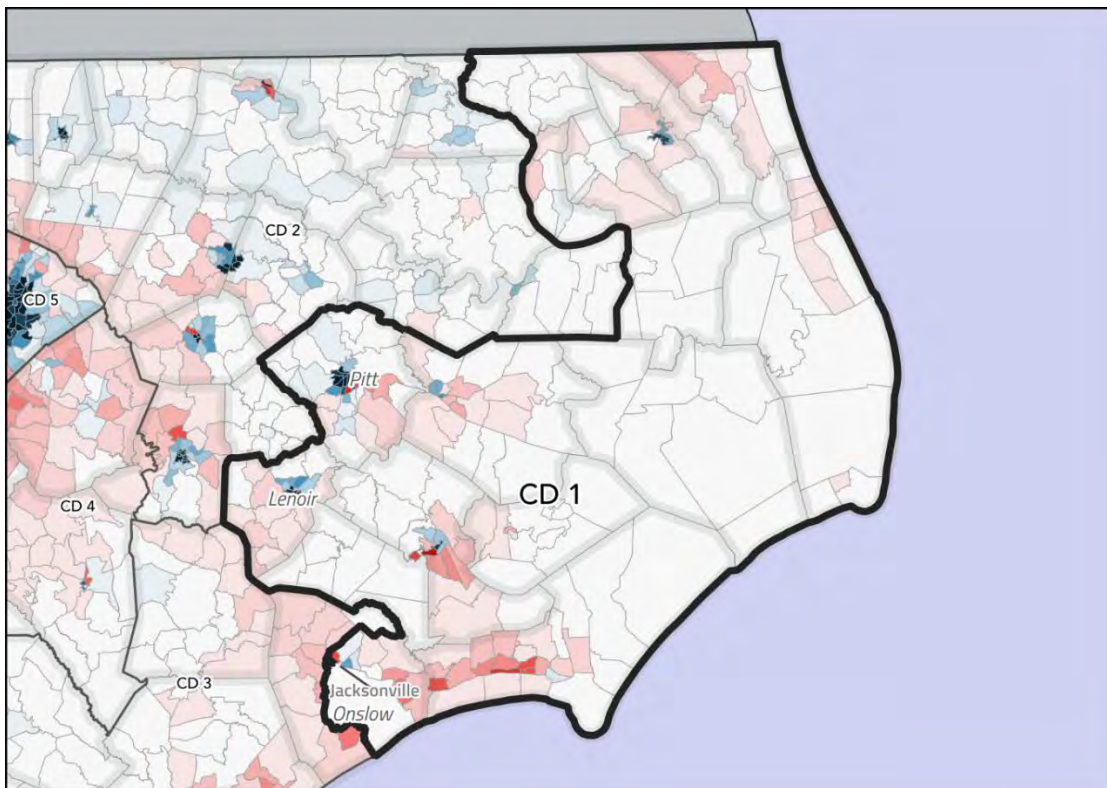
Carolina’s political geography and traditional redistricting principles including equal population, contiguity and compactness, and avoiding splitting counties and VTDs. Dr. Chen found that the 2021 Plan was extraordinarily anomalous and heavily gerrymandered.

106. The sections below describe some of the most egregious examples of packing and cracking in each district.

Congressional District 1

107. Similar to District 3 in the 2016 Plan, Legislative Defendants drew District 1 to be a safe Republican seat while undermining Democratic voting strength in the neighboring District 2—the predecessor of which was a Democratic-leaning seat represented by Congressman G.K. Butterfield. District 1 receives nearly all of Pitt County’s Democratic VTDs from Congressman Butterfield’s former district (District 1 in the 2019 Plan), including the entire city of Greenville.

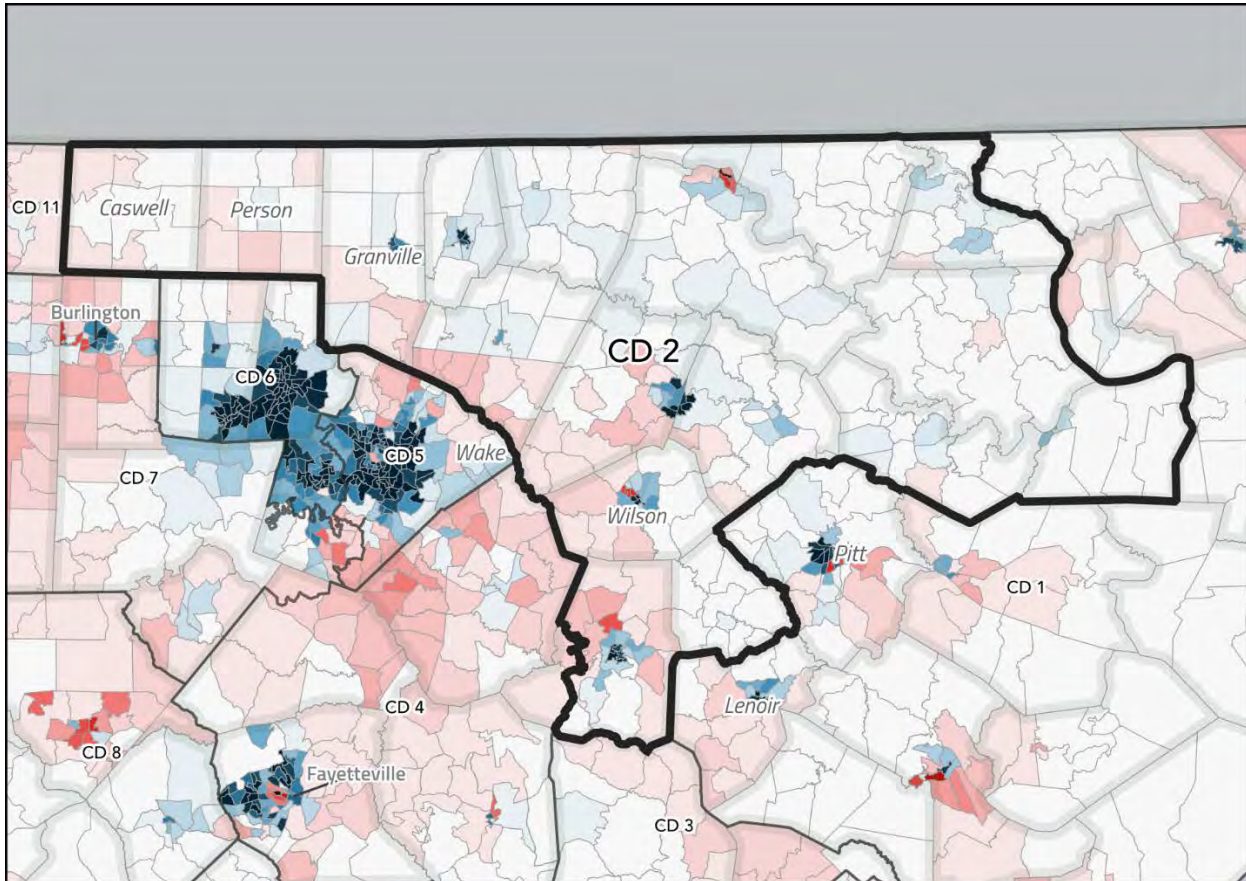
108. The following image (and others below) shows the district’s boundaries and the partisanship of its VTDs using a composite of the results of the 2020 North Carolina Attorney General and 2020 North Carolina Labor Commissioner races, with darker blue shading for the VTDs that voted more heavily Democratic, darker red for VTDs that voted more heavily Republican, and lighter shading for VTDs that were closer to a tie—with the shading adjusted for the VTD’s population.



109. The upshot of Legislative Defendants’ engineering is a safe Republican seat where Democratic voters have no meaningful chance of electing the candidate of their choice. In the 2020 presidential election, for example, Democratic candidate Joe Biden won only 43.2% of the vote in the new District 1.

Congressional District 2

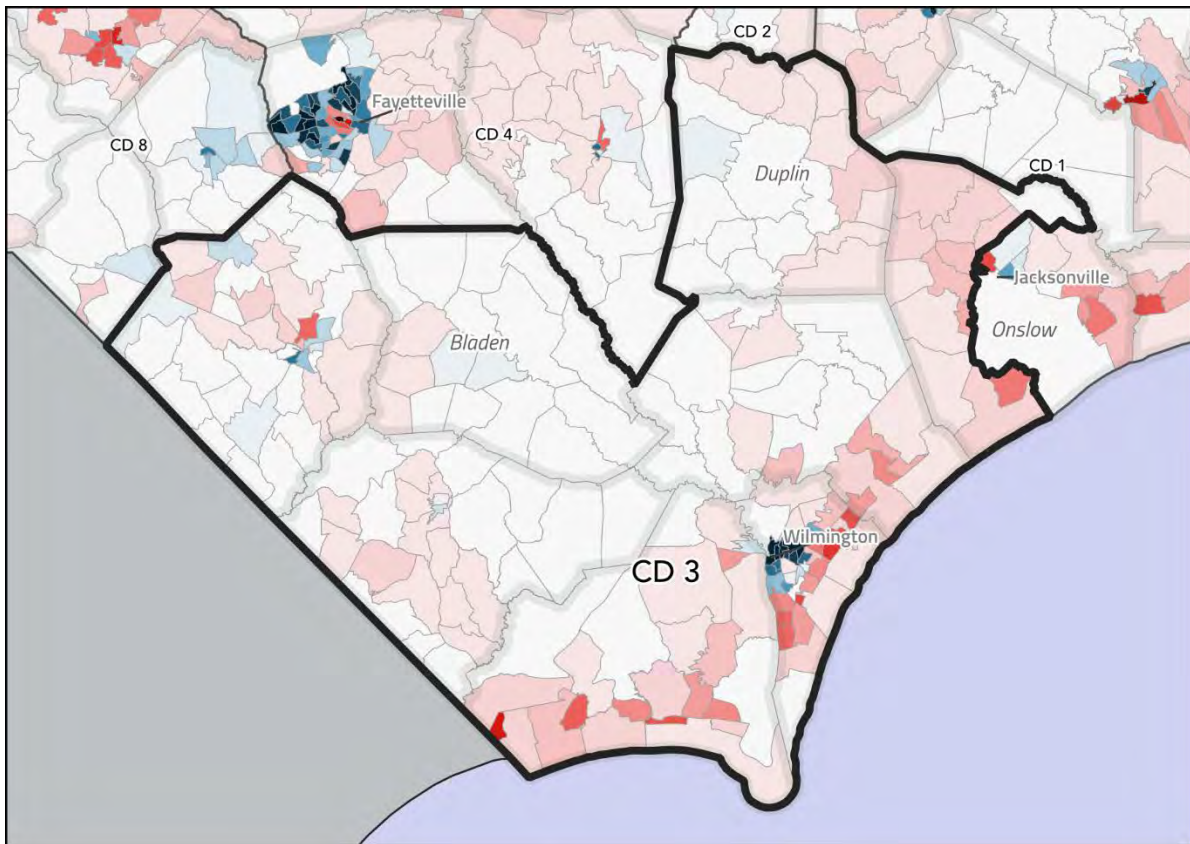
110. District 2 was a Democratic district under both the 2016 and 2019 Plans. The 2021 Plan significantly improves Republicans’ voting strength in the district by removing the Democratic stronghold of Greenville from Congressman Butterfield’s district and placing it into the new District 1. Legislative Defendants further undermined Democratic voting strength in this district by expanding the boundaries of its predecessor westward, stretching nearly 200 miles from the east to encompass the Republican strongholds of Caswell and Person Counties.



111. Legislative Defendants succeeded in undermining Democratic competitiveness in this district: President Biden won 51% of the vote in this new district, compared to 54% under the predecessor district in the 2019 Plan.

Congressional District 3

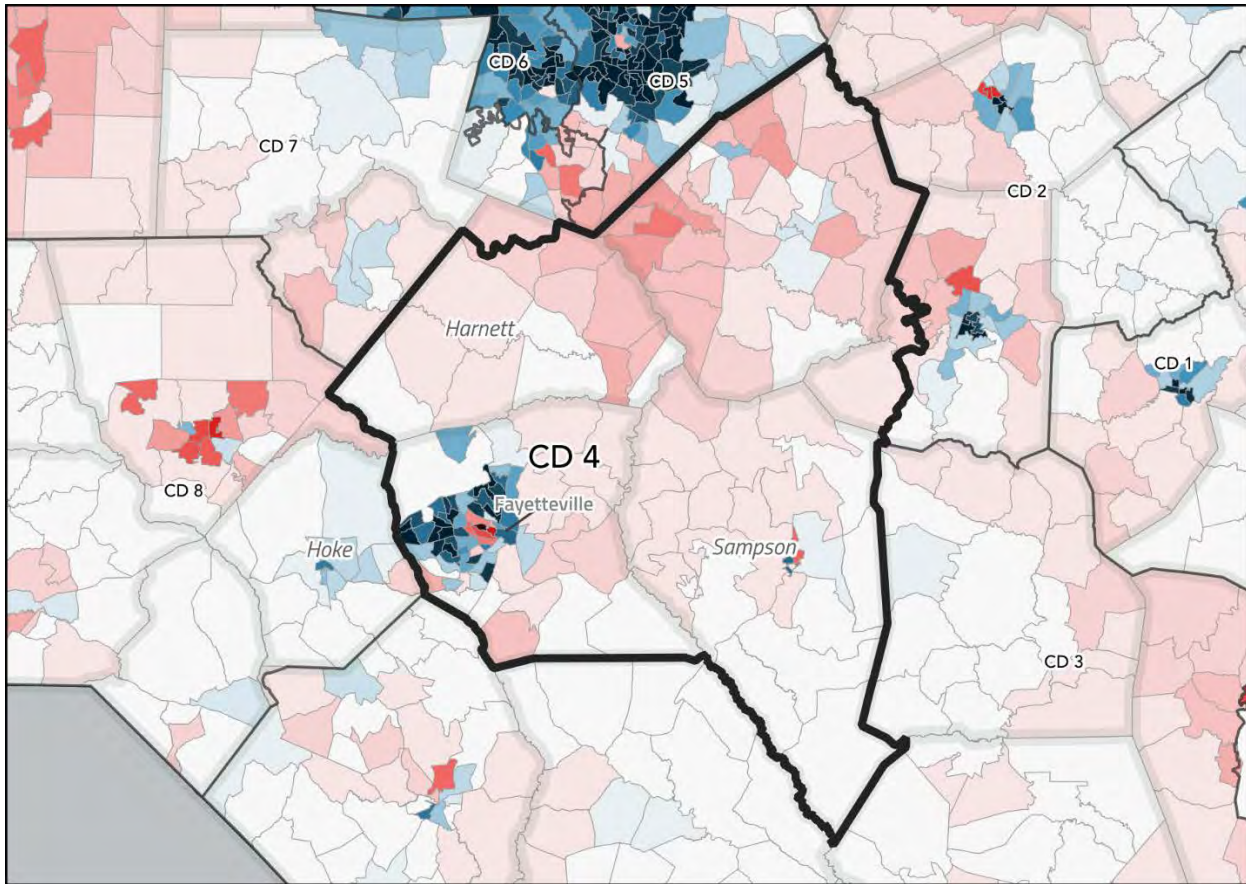
112. Ignoring the overwhelming calls of constituents to place the competitive Sandhills region in a single congressional district, the 2021 Plan splits it across Districts 3, 4, and 8. The plan creates a safe Republican seat in District 3 by combining the eastern part of the region with counties along the southeastern coastline. The eastern boundary hews around the relatively Democratic city of Jacksonville, which is instead placed in District 1 where its residents have no realistic prospect of electing a Democratic candidate.



113. District 3 is indeed a safe Republican seat: President Biden won only 41.5% of the vote in this district in the 2020 election.

Congressional District 4

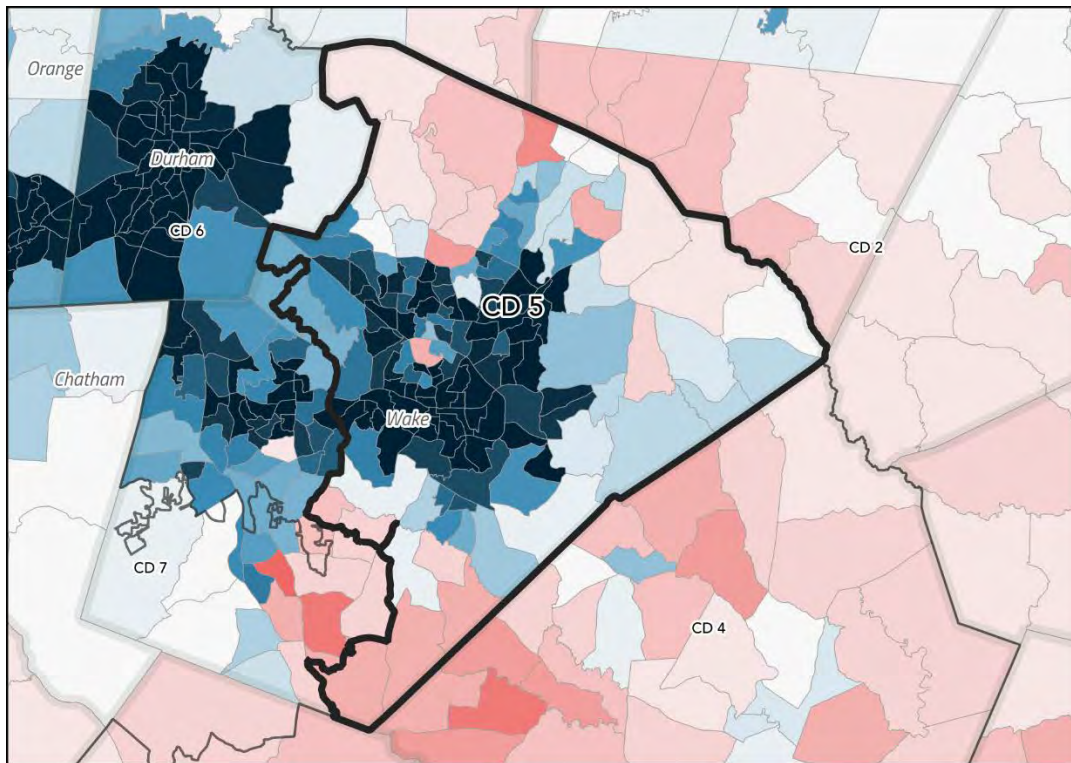
114. Legislative Defendants likewise engineered District 4 to be a safe Republican seat that destroys the voting power of Democrats in Cumberland County—home to Fayetteville and Fort Bragg. District 4 combines the Democratic stronghold of Cumberland County with the three overwhelmingly Republican counties of Sampson, Johnston, and Harnett. The district also picks up heavily Republican VTDs in Wayne County.



115. As expected, the new District 4 performs as a Republican district. In the 2020 presidential election, President Biden received only 46.5% of the vote.

Congressional District 5

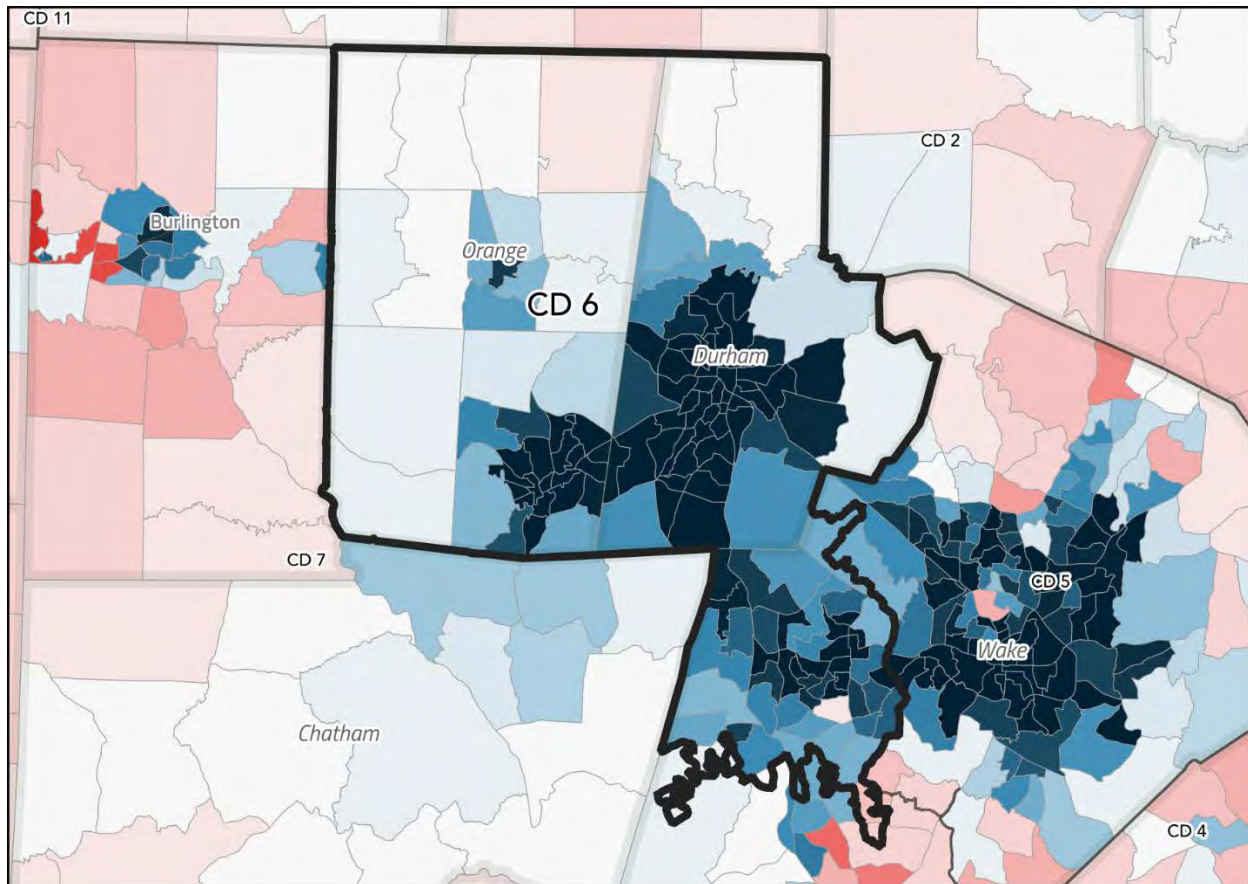
116. District 5 is the result of flagrant packing and cracking of Democratic voters in the largest Democratic stronghold in the state—Wake County. The 2021 Plan packs these voters by creating a single, safe Democratic district—District 5—out of most of Wake County, including all of its most Democratic VTDs. It then splits the remaining Wake County Democratic voters into two neighboring districts to dilute their power: Voters in Cary and Apex are packed into the safe Democratic District 6, which contains heavily Democratic Orange and Durham Counties, while the remaining population is roped into the overwhelmingly Republican District 7, which stretches west across the state to pick up heavily Republican Randolph and parts of Davidson and Guilford Counties.



117. Legislative Defendants succeeded in creating a safe Democratic district: President Biden won an overwhelming 65.5% of the vote in the new District 5 in the 2020 presidential election.

Congressional District 6

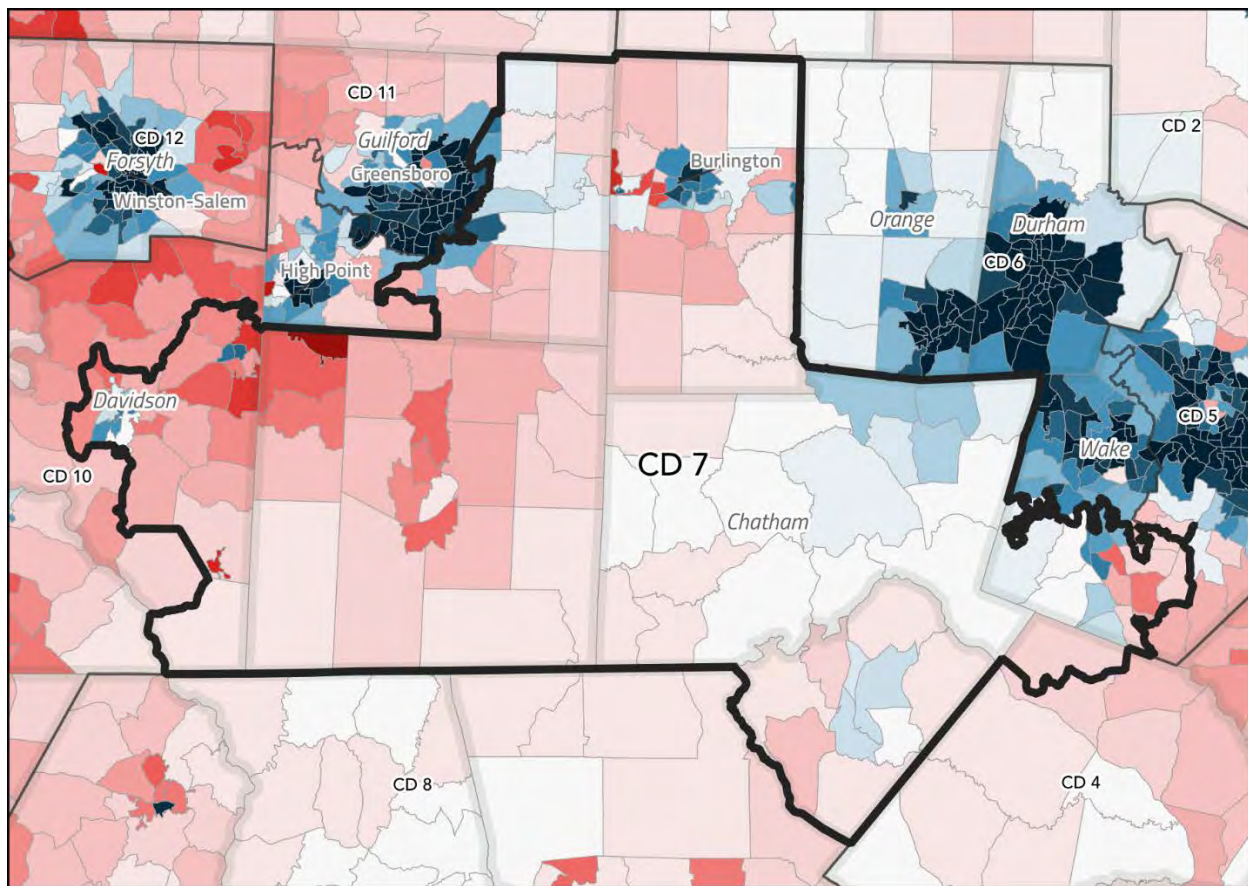
118. Legislative Defendants packed Democratic voters into District 6 to create a safe Democratic seat. They did so by combining the heavily Democratic Orange and Durham Counties into a single district. District 6 also includes a heavily Democratic swath of voters from the fractured Wake County. This pairing is comparable to the way in which these areas were packed in the 2016 plan.



119. As expected, District 6 is an overwhelmingly Democratic district where Democrats' votes are wasted: President Biden won 73.3% of the vote in the new District 6.

Congressional District 7

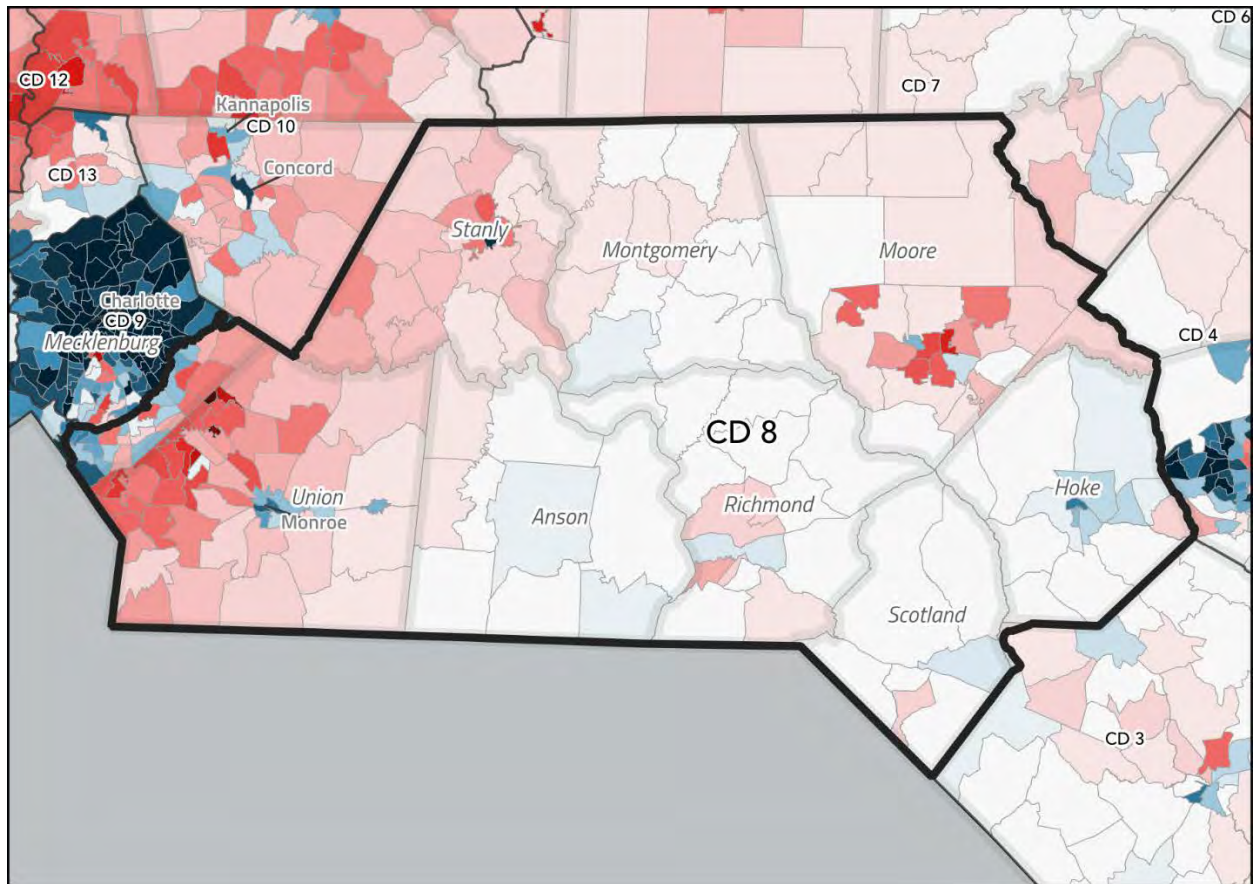
120. Legislative Defendants created a safe Republican seat in District 7 by fracturing the Democratic stronghold of Guilford County. District 7 stitches together Democratic voters from the southeastern portion of Greensboro and Guilford County, along with Democratic-leaning Chatham County and Democratic-leaning voters from the fractured Wake County, with heavily Republican Randolph, Alamance, and Lee Counties. District 7 also borrows heavily Republican VTDs from Davidson County in the western part of the district.



121. Democrats have no meaningful chance of electing a candidate of their choice in the new District 7: President Biden won only 41.1% of the vote in this district during the 2020 presidential election.

Congressional District 8

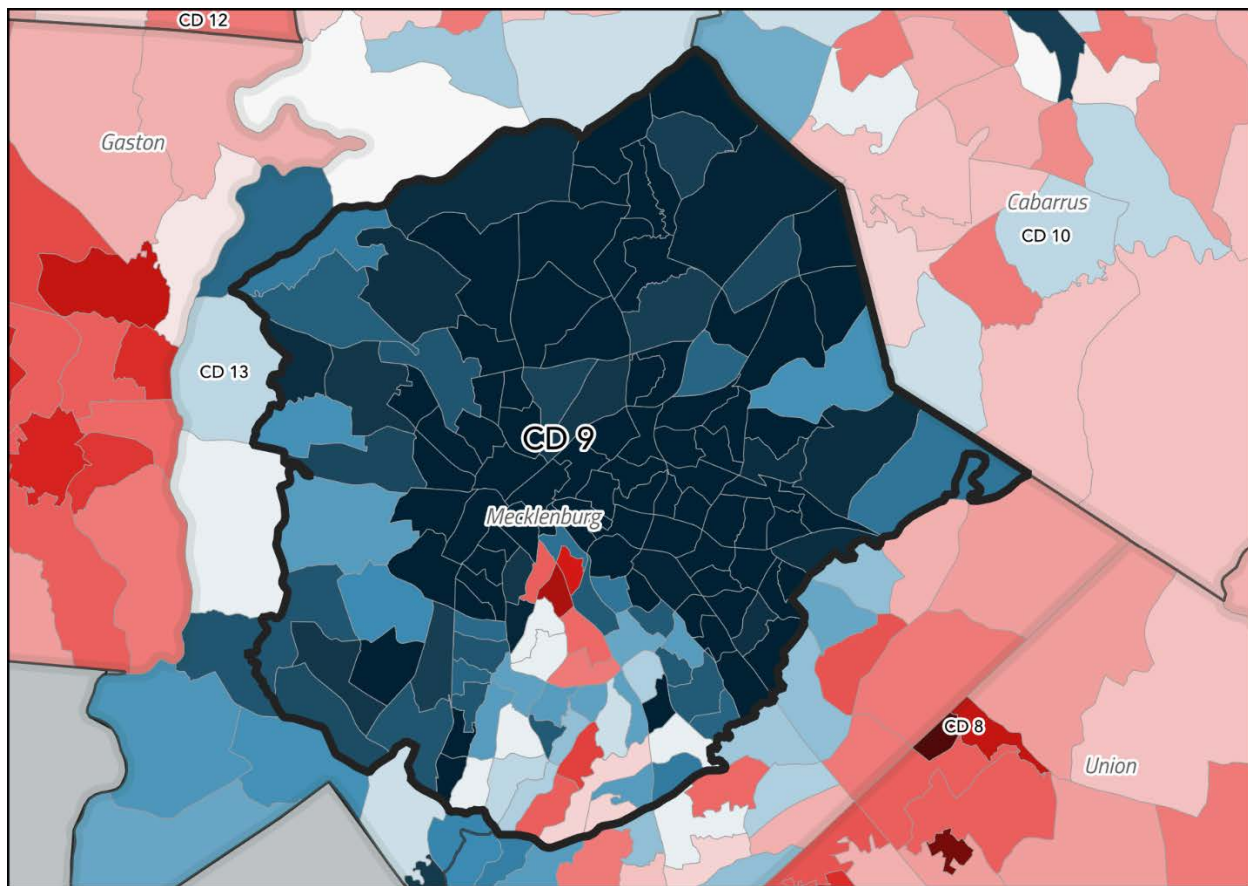
122. Legislative Defendants created a safe Republican seat in District 8 by combining Democratic-leaning Hoke and Anson Counties with heavily Republican Union, Moore, Montgomery, and Stanly Counties. As discussed in greater detail below, Legislative Defendants also included portions of heavily Democratic Mecklenburg County in District 8, splitting Charlotte and ensuring that Democratic votes in that county would be wasted in this safe Republican seat.



123. District 8 performs as expected: President Biden won only 41.1% of the vote in the new District 7.

Congressional District 9

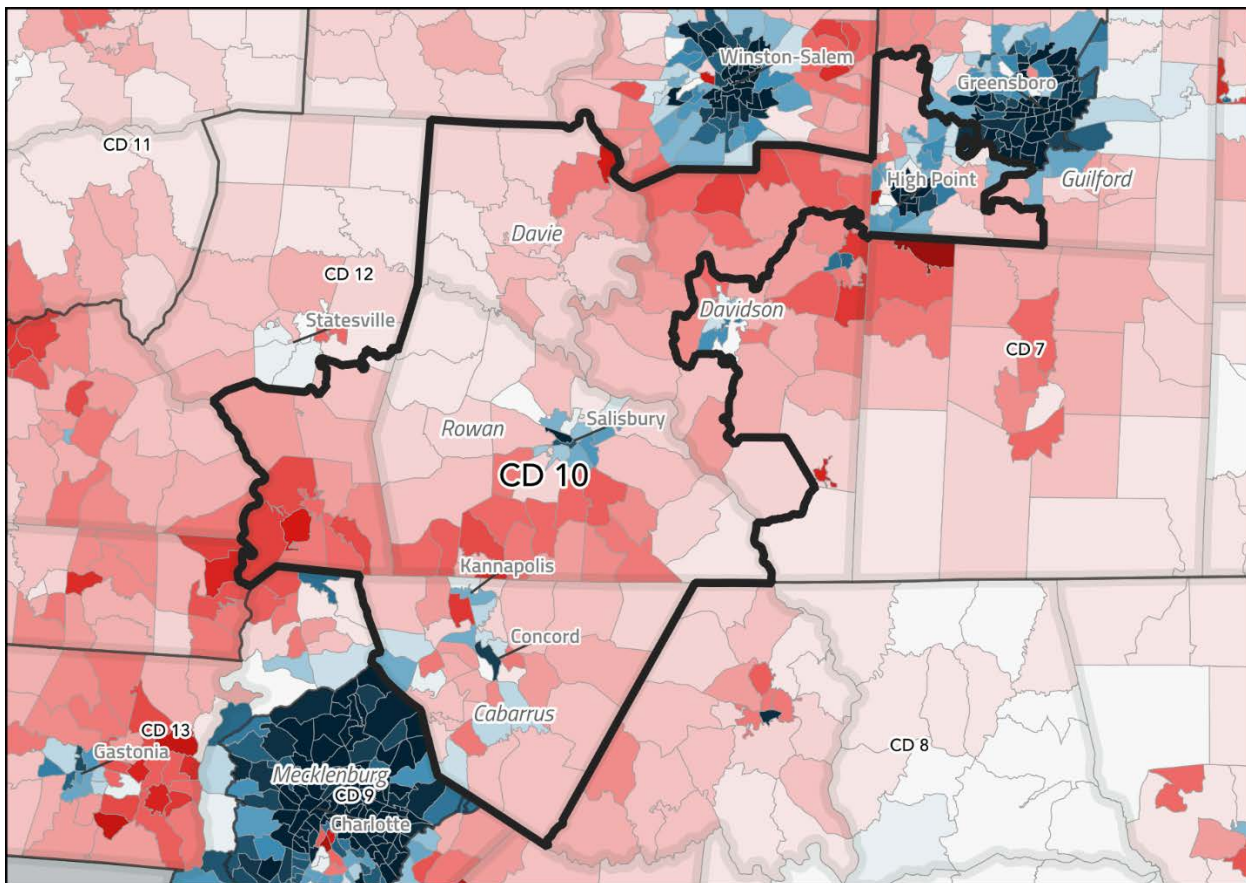
124. District 9, a guaranteed Democratic district capturing a carefully hewn chunk of Charlotte, reflects flagrant packing of Democratic voters in heavily Democratic Mecklenburg County. As discussed earlier, Legislative Defendants divided this Democratic stronghold into three districts: many (but not all) of Mecklenburg County’s most Democratic VTDs are packed into District 9. The rest of Mecklenburg’s Democratic voters are meticulously cracked between District 8 and District 13.



125. Legislative Defendants inarguably succeeded in wasting Democrats’ votes by packing them into this district: President Biden won an overwhelming 75.8% of the vote in this district in the 2020 presidential election, an increase from 71.5% under the Charlotte-based District 12 in the 2019 Plan.

Congressional District 10

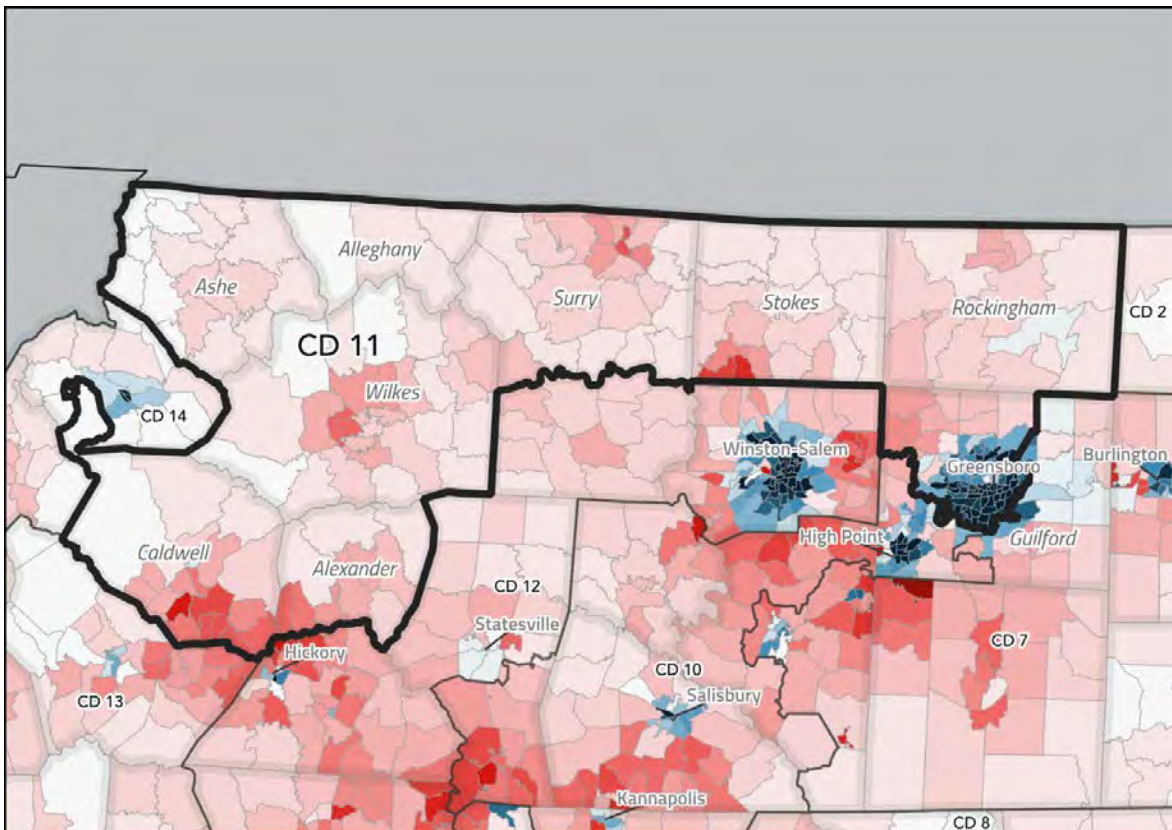
126. As discussed, Legislative Defendants cracked Guilford County—one of the largest Democratic counties in the state—among three different districts, ensuring that all Democratic votes in Guilford County are wasted. District 10, the southeastern district in the tripartite split, groups the heavily Democratic voters in High Point with the overwhelmingly Republican neighboring counties of Davidson, Cabarrus, Rowan, and Davie. District 10 in the 2021 Plan thus closely resembles District 13 in the 2016 Plan, which similarly paired High Point and other Democratic Guilford County voters with several of the same Republican counties to the west.



127. Legislative Defendants succeeded in creating another safe Republican seat here: President Biden won only 39.5% of the vote in the new District 10 in the 2020 election.

Congressional District 11

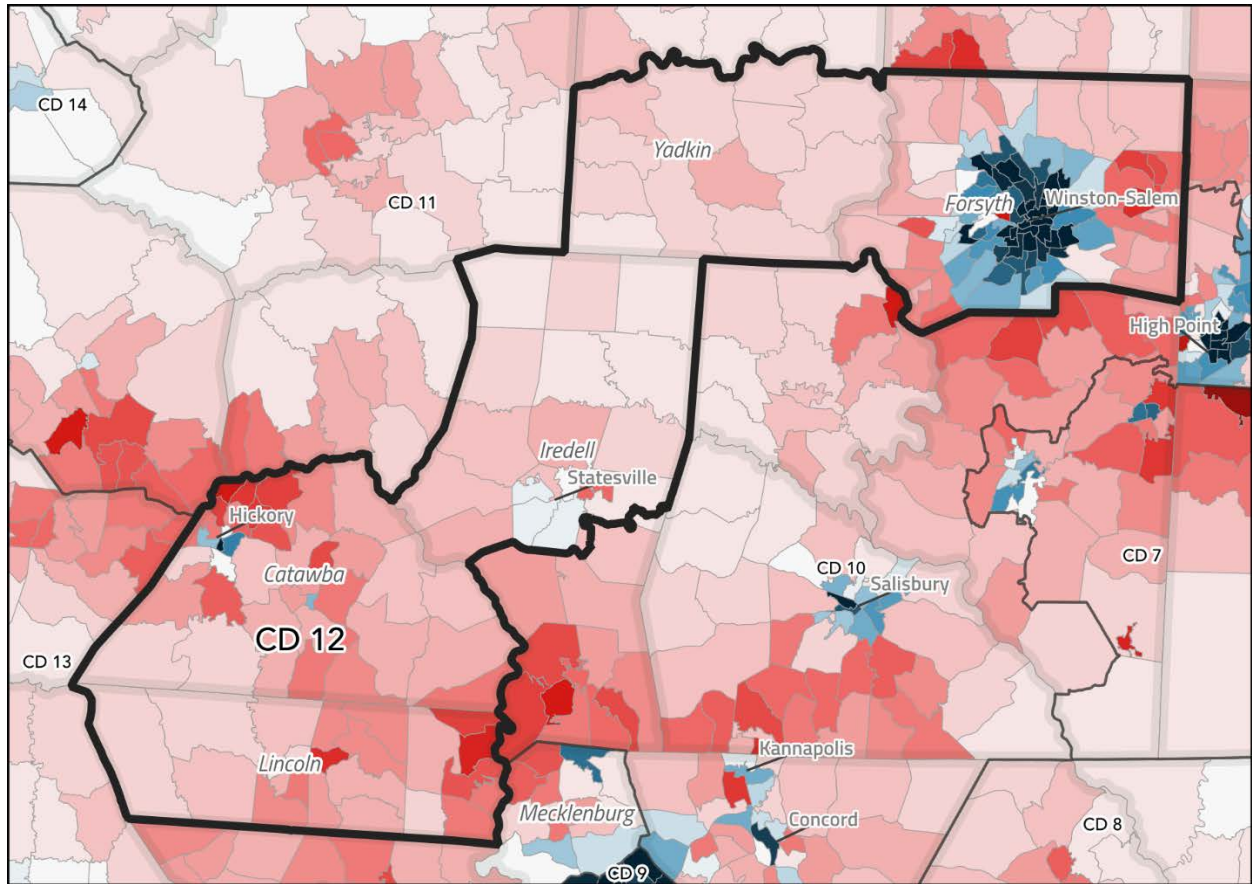
128. Evoking a handgun aiming eastward, District 11 takes the third portion of the fractured Guilford County—including much of the heavily Democratic city of Greensboro—and combines it with heavily Republican counties in the northwestern part of the state, ensuring that Greensboro’s Democratic voters have no influence in a safe Republican district. District 11 also cuts out a bizarre, boot-like bit of Watauga County to encompass the residential address of Republican incumbent Congresswoman Virginia Foxx, in a seemingly intentional effort to place her in the same district as Congresswoman Manning. District 11 thus takes the same basic approach to splitting apart the Triad area as District 5 did in the 2016 Plan, but swaps Guilford’s Democratic voters in for those in Forsyth County.



129. As expected, the new District 11 is a safe Republican seat: President Biden won a mere 42.9% of the vote here in 2020.

Congressional District 12

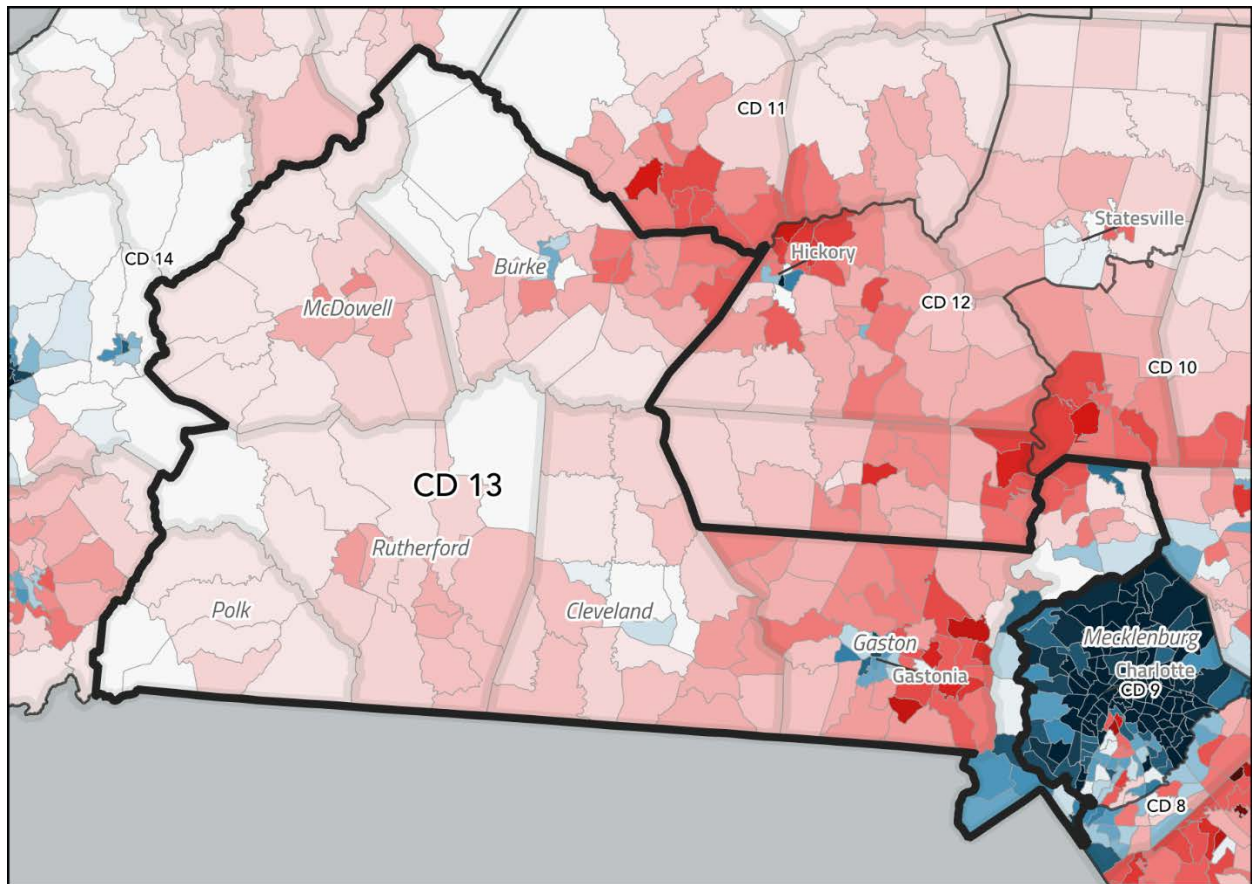
130. District 12 pieces together heavily Democratic Forsyth County, including Winston-Salem, with four heavily Republican counties to the south and west. District 12 also splits Iredell County in half with District 10, and fences in the Democratic cities of Statesville and Hickory. The result is a safe Republican district that effectively guarantees that Democratic voters in Winston-Salem, Statesville, and Hickory cannot elect a candidate of their choice.



131. In the 2020 presidential election, President Biden won only 43.4% of the vote in this new district.

Congressional District 13

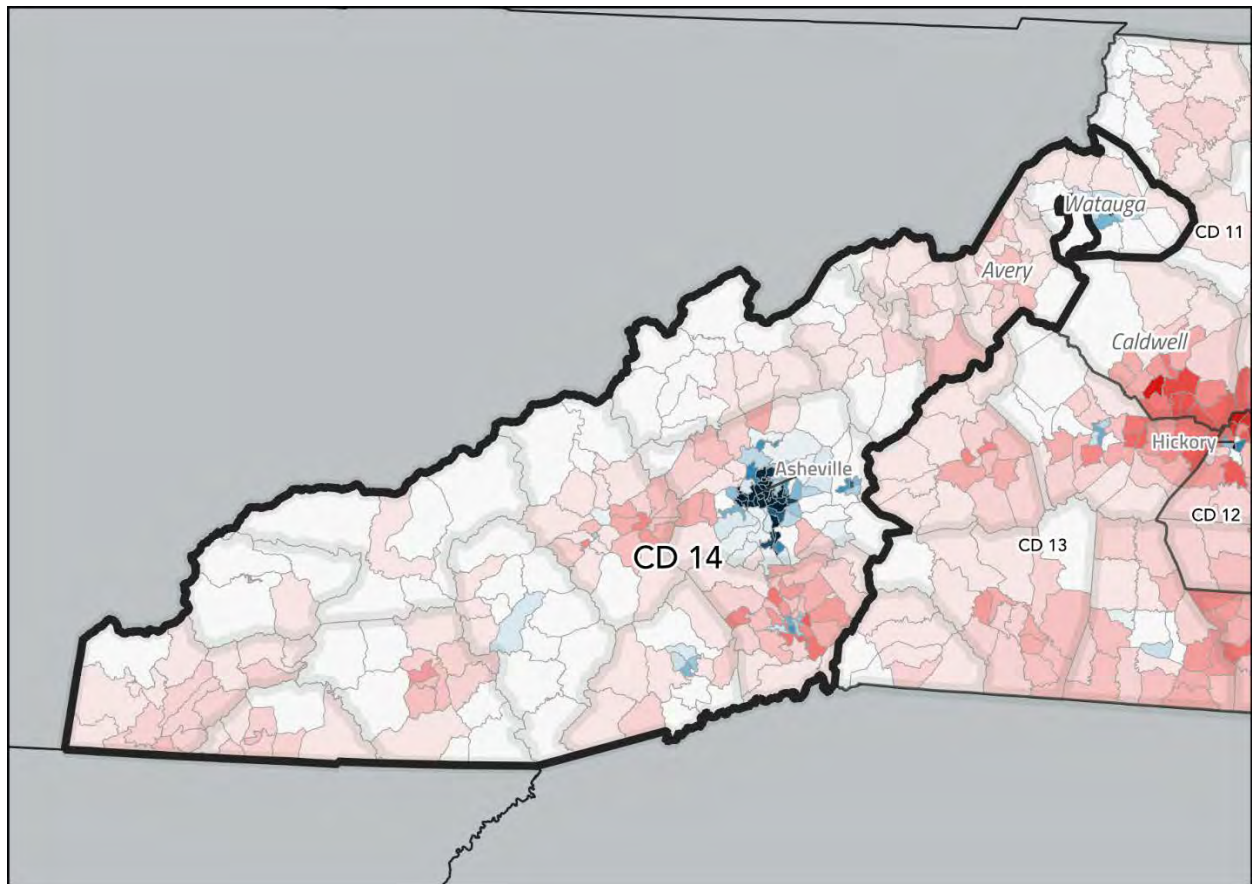
132. Akin to District 10 in the 2016 Plan, Legislative Defendants created a safe Republican seat in District 13 by combining voters from the cracked Mecklenburg County and from Gastonia with heavily rural and Republican counties to the west. While two incumbents are double bunked in neighboring District 11, no incumbent resides in District 13, which includes Defendant Speaker Moore's residence.



133. The new District 13 performs as expected: President Biden won 39.2% of the vote here in the 2020 election.

Congressional District 14

134. Finally, similar to District 11 in the 2016 Plan, Legislative Defendants created a safe Republican seat in District 14 by capturing heavily Republican counties in the western part of the state, pairing them with Asheville’s Democratic voters to ensure that they cannot elect a candidate of their choice. District 14 pairs Watauga County and Buncombe for the first time since the 1870s and meticulously avoids the Watauga County boot covering Republican incumbent Virginia Foxx.



135. Democrats have little chance of electing a candidate of their choice here: President Biden won 46.3% of the vote here in 2020.

COUNT ONE
Violation of the North Carolina Constitution’s
Free Elections Clause, Art. I, § 10

136. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

137. Article I, Section 10 of the North Carolina Constitution, which has no counterpart in the U.S. Constitution, provides that “All elections shall be free.”

138. North Carolina’s Free Elections Clause traces its roots to the 1689 English Bill of Rights, which declared that “Elections of members of Parliament ought to be free.” Bill of Rights 1689, 1 W. & M. c. 2 (Eng.); see John V. Orth, *North Carolina Constitutional History*, 70 N.C. L. Rev. 1759, 1797–98 (1992).

139. This provision of the 1689 English Bill of Rights was a product of the king’s efforts to manipulate parliamentary elections, including by changing the electorate in different areas to achieve “electoral advantage.” J.R. Jones, *The Revolution of 1688 in England* 148 (1972). The king’s efforts to maintain control of parliament by manipulating elections led to a revolution. After dethroning the king, the revolutionaries called for a “free and lawful parliament” as a critical reform. Grey S. De Krey, *Restoration and Revolution in Britain: A Political History of the Era of Charles II and the Glorious Revolution* 241, 247-48, 250 (2007).

140. North Carolina has strengthened the Free Elections Clause since its adoption to reinforce its principal purpose of preserving the popular sovereignty of North Carolinians. The original clause, adopted in 1776, provides that “elections of members, to serve as Representatives in the General Assembly, ought to be free.” N.C. Declaration of Rights, VI (1776). Nearly a century later, North Carolina revised the clause to state that “[a]ll elections ought to be free,” thus expanding the principle to include all elections in North Carolina. N.C. Const. art. I, § 10 (1868). And another century later, North Carolina adopted the current version which provides that “[a]ll elections *shall* be free.” As the North Carolina Supreme Court later

explained, this change was intended to “make [it] clear” that the Free Elections Clause and the other rights secured to the people by the Declaration of Rights “are commands and not mere admonitions” to proper conduct on the part of the government. *N.C. State Bar v. DuMont*, 304 N.C. 627, 635, 639 (1982) (internal quotations omitted).

141. Based on the text and history of North Carolina’s Free Elections Clause, “the meaning of the Free Elections Clause is that elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” Order on Inj. Relief at 6. “[E]xtreme partisan gerrymandering—namely redistricting plans that entrench politicians in power, that evince a fundamental distrust of voters by serving the self-interest of political parties over the public good, and that dilute and devalue votes of some citizens compared to others—is contrary to the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at 7.

142. “[P]artisan gerrymandering . . . strikes at the heart of the Free Elections Clause.” *Common Cause v. Lewis*, 18-CVS-014001, slip op. at 305. “[E]xtreme partisan gerrymandering—namely redistricting plans that entrench politicians in power, that evince a fundamental distrust of voters by serving the self-interest of political parties over the public good, and that dilute and devalue votes of some citizens compared to others—is contrary to the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at 302. Simply put, “[e]lections are not free when partisan actors have tainted future elections by specifically and systematically designing the contours of the election districts for partisan purposes and a desire to preserve power.” *Id.* at 305.

143. The 2021 Plan violates the Free Elections Clause in the same way as the

invalidated 2016 Plan and 2017 state legislative plans. In creating the 2021 Plan, Legislative Defendants “specifically and systematically design[ed] the contours of the election districts for partisan purposes and a desire to preserve power.” *Id.* at 305. The 2021 Plan “unlawfully seek[s] to predetermine election outcomes in specific districts” and across the state as a whole. *Id.* Because of Legislative Defendants’ extreme partisan gerrymandering of the 2021 Plan, congressional elections in North Carolina are not “conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at 302. In particular, the 2021 Plan takes the three largest Democratic counties in the state and trisects each one among different congressional districts, effectively diluting Democratic voting power throughout the state. And it packs the remaining Democratic strongholds into a handful of congressional districts, resulting in a map that produces 10 safe Republican seats, 3 safe Democratic seats, and 1 competitive seat.

COUNT TWO
Violation of the North Carolina Constitution’s
Equal Protection Clause, Art. I, § 19

144. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

145. Article I, Section 19 of the North Carolina Constitution provides in relevant part that “[n]o person shall be denied the equal protection of the laws.”

146. North Carolina’s Equal Protection Clause affords broader protections to its citizens in the voting rights context than the U.S. Constitution’s equal protection provisions. *See Stephenson v. Bartlett*, 355 N.C 354, 376–81 & n.6 (2002); *Blankenship v. Bartlett*, 363 N.C. 518, 523–24, (2009).

147. Irrespective of its federal counterpart, North Carolina’s Equal Protection Clause protects the right to “substantially equal voting power.” *Stephenson*, 355 N.C. at 379. “It is well settled in this State that the right to vote on equal terms is a fundamental right.” *Id.* at 378 (internal quotation marks omitted). Thus, the North Carolina Supreme Court has enforced the

State’s Equal Protection Clause to invalidate other redistricting schemes, such as the combined use of single-member and multi-member districts in a redistricting plan that “impermissibl[y] distin[guished] among similarly situated citizens” and thus “necessarily implicate[d] the fundamental right to vote on equal terms.” *Id.* at 377–78.

148. Partisan gerrymandering violates North Carolina’s Equal Protection Clause. “[P]artisan gerrymandering runs afoul of the State’s obligation to provide all persons with equal protection of law because, by seeking to diminish the electoral power of supporters of a disfavored party, a partisan gerrymander treats individuals who support candidates of one political party less favorably than individuals who support candidates of another party.” Order on Inj. Relief at 8.

149. The 2021 Plan violates North Carolina’s Equal Protection Clause in the same ways as the invalidated 2016 Plan and 2017 state legislative plans. In drawing the new congressional map, Legislative Defendants “acted with the intent, unrelated to any legitimate legislative objection, to classify voters and deprive citizens of the right to vote on equal terms.” *Common Cause v. Lewis*, 18-CVS-014001, slip. op. at 312. Legislative Defendants drew and enacted a congressional map that systematically discriminates against Democratic voters, and that cannot be explained in any other way. Legislative Defendants’ intent is laid bare by the packing and cracking of particular Democratic communities described above.

150. And, as with the 2016 Plan and 2017 state legislative plans, these efforts have produced discriminatory effects for Plaintiffs and other Democratic voters. On a statewide basis, Democrats will continue to receive far fewer congressional seats than they would absent the gerrymander. The grossly disproportionate number of seats that Republicans have won and will continue to win in the congressional delegation relative to their share of the statewide vote

cannot be explained or justified by North Carolina’s political geography or any legitimate redistricting criteria. The packing and cracking of Democratic voters under the 2021 Plan burdens the representational rights of Democratic voters individually and as a group, and discriminates against Democratic candidates and organizations individually and as a group. “[P]acking dilutes the votes of Democratic voters such that their votes, when compared to the votes of Republican voters, are substantially less likely to ultimately matter in deciding the election results.” *Common Cause*, 18-CVS-014001, slip. op. at 314. And “the entire purpose of cracking likeminded voters across multiple districts is so they do not have sufficient ‘voting power’ to join together and elect a candidate of their choice.” *Id.* Legislative Defendants can offer no legitimate justification for their overriding partisan intent in drawing the 2021 Plan.

COUNT THREE

Violation of the North Carolina Constitution’s Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14

151. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

152. Article I, § 12 of the North Carolina Constitution provides in relevant part: “The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.”

153. Article I, § 14 of the North Carolina Constitution provides in relevant part: “Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained.”

154. “There is no right more basic in our democracy than the right to participate in electing our political leaders—including, of course, the right to vote.” Order on Inj. Relief, *Harper I*, at 9. “Political belief and association constitute the core of those activities protected by the First Amendment.” *Id.* And in North Carolina, “the right to assembly encompasses the right of association.” *Id.* “[F]or elections to express the popular will, the right to assemble and consult

for the common good must be guaranteed.” *Id.* (quoting John V. Orth, *The North Carolina State Constitution* 48 (1995)).

155. Irrespective of the U.S. Constitution, the 2021 Plan violates Article I, § 14 of the North Carolina Constitution by “burden[ing] protected expression based on viewpoint by making Democratic votes less effective.” *Common Cause*, 18-CVS-014001, slip. op. at 322. Legislative Defendants “identified certain preferred speakers (e.g., Republican voters), while targeting certain disfavored speakers (e.g., Democratic voters) because of disagreement with the views they express when they vote.” Order on Inj. Relief, *Harper I*, at 10. Legislative Defendants singled out Democratic voters for disfavored treatment by packing and cracking them into districts with the aim of diluting their votes and, in the case of cracked districts, ensuring that these voters are significantly less likely, in comparison to Republican voters, to be able to elect a candidate who shares their views. “The fact that Democratic voters can still cast ballots under gerrymandered maps changes nothing. The government unconstitutionally burdens speech where it renders disfavored speech *less effective*, even if it does not ban such speech outright.” *Common Cause*, 18-CVS-014001, slip. op. at 323.

156. Irrespective of the U.S. Constitution, the 2021 Plan independently violates Article I, § 12 because it “severely burden[s]—if not outright preclude[s]”—the ability of Democratic voters to associate by eroding their ability to “instruct” and “obtain redress” from their members of Congress on issues important to them. *Common Cause*, 18-CVS-014001, slip. op. at 326-27.

157. Irrespective of the U.S. Constitution, the 2021 Plan independently violates Article I, Sections 12 and 14 of the North Carolina Constitution by retaliating against Plaintiffs and other Democratic voters based on their exercise of political speech. The 2021 Plan takes adverse action against Plaintiffs and other Democratic voters, retaliates against their protected speech and

conduct, and would not have taken the adverse action but for Legislative Defendants’ retaliatory intent to pack and crack Democratic voters because of their prior political speech and associations.

158. There is no legitimate state interest in discriminating and retaliating against Plaintiffs because of their political viewpoints, voting histories, and affiliations. Nor can the 2021 Plan be explained or justified by North Carolina’s geography or any legitimate redistricting criteria.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor and against Defendants, and

a. Declare that the 2021 Plan is unconstitutional and invalid because it violates the rights of Plaintiffs and all Democratic voters in North Carolina under the North Carolina Constitution’s Free Elections Clause, Art. I, § 10; Equal Protection Clause, Art. I, § 19; and Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14;

b. Enjoin Defendants, their agents, officers, and employees from administering, preparing for, or moving forward with the 2022 primary and general elections for Congress using the 2021 Plan;


c. Establish a new congressional districting plan that complies with the North Carolina Constitution, if the North Carolina General Assembly fails to enact a new congressional districting plan comporting with the North Carolina Constitution in a timely manner;

d. Enjoin Defendants, their agents, officers, and employees from using past election results or other political data in any future redistricting of North Carolina’s congressional districts to intentionally dilute the voting power of citizens or groups of citizens based on their political beliefs, party affiliation, or past votes;

e. Enjoin Defendants, their agents, officers, and employees from otherwise intentionally diluting the voting power of citizens or groups of citizens in any future redistricting of North Carolina’s congressional districts based on their political beliefs, party affiliation, or past votes; and

f. Grant Plaintiffs such other and further relief as the Court deems just and appropriate.

Dated: November 18, 2021

By: _____

PATTERSON HARKAVY LLP

Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Plaintiffs

ELIAS LAW GROUP LLP

Marc E. Elias*
Aria C. Branch*
Lalitha D. Madduri*
Jacob D. Shelly*
Graham W. White*
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
MElias@elias.law
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

Abha Khanna*
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
AKhanna@elias.law

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

Elisabeth S. Theodore*
R. Stanton Jones*
Samuel F. Callahan*
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
elisabeth.theodore@arnoldporter.com

Counsel for Plaintiffs

* *Pro hac vice* application forthcoming

**Supreme Court
State of North Carolina
Raleigh**

CHAMBERS OF
PAUL NEWBY
CHIEF JUSTICE

BOX 1841
ZIP CODE 27601
TEL. (919) 831-5715

**Office of the
Chief Justice of the Supreme Court
of North Carolina**

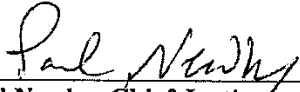
ORDER

To the Honorables **A. Graham Shirley, Nathaniel J. Poovey, and Dawn M. Layton**,
Judges of the Superior Court of North Carolina, Greetings:

As Chief Justice of the Supreme Court of North Carolina, by virtue of authority vested in me by the Constitution of North Carolina, and in accordance with the laws of North Carolina, the Rules of the Supreme Court, and specifically Chapter 1, Article 26A of the General Statutes of North Carolina, I hereby assign you to serve on a Three-Judge Panel for Redistricting Challenges, as defined in N.C.G.S. § 1-267.1, to hear and determine the following action challenging the validity of an act of the General Assembly that redistricts State legislative or congressional districts:

North Carolina League of Conservation Voters, Inc., et al. v. Representative
Destin Hall, in his official capacity as Chair of the House Standing Committee
On Redistricting, et al., 21 CVS 15426 (Wake County).

In Witness Whereof, I have hereunto signed my name as Chief Justice of the Supreme Court of North Carolina, on this day, November 19, 2021.



**Paul Newby, Chief Justice
Supreme Court of North Carolina**

FILED

STATE OF NORTH CAROLINA
WAKE COUNTY
NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS INC. et al.,
Plaintiffs,
v.
REPRESENTATIVE DESTIN HALL, *in his
official capacity as Chair of the House
Standing Committee on Redistricting*, et al.,
Defendants.

2021 NOV 22 P 1:35
WAKE CO., C.S.C.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 15426

AFFIDAVIT OF SERVICE

1. I am an attorney for Plaintiffs.
2. On November 16, 2021, Plaintiffs filed their verified complaint in Wake County Superior Court, which issued summonses for:
 - a. Defendants Representative Destin Hall, Senator Warren Daniel, Senator Ralph E. Hise, Jr., Senator Paul Newton, Speaker of the House of Representatives Timothy K. Moore, and Senate President Pro Tempore Philip E. Berger, all in their official capacities (together, the "Legislative Defendants"); and
 - b. Defendants the North Carolina State Board of Elections; Chair Damon Circosta; Secretary Stella Anderson; Members Jeff Carmon III, Stacy Eggers IV, and Tommy Tucker; and Executive Director Karen Brinson Bell, all in their official capacities (together, the "State Board Defendants"); and the State of North Carolina.
3. On November 16, 2021, Plaintiffs also filed a Motion for Preliminary Injunction and affidavits of Dr. Moon Duchin, Grace Liberman, and Stephen D. Feldman (together with the verified complaint and summonses, the "Documents") in Wake County Superior Court.

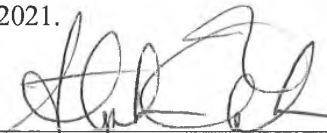
4. On November 17, 2021, Counsel for the Legislative Defendants indicated that they would be representing the Legislative Defendants in this matter but declined to accept service. Plaintiffs served the Documents on the Legislative Defendants on November 18, 2021 by delivering a copy of the Documents for each Legislative Defendant to the Attorney General pursuant to Rule 4(j)(4) of the North Carolina Rules of Civil Procedure, as shown on Exhibit A. Plaintiffs also served the Documents on the Legislative Defendants by depositing them with Federal Express, a delivery service pursuant to 26 U.S.C. § 7502(f)(2), in accordance with Rule 4(j)(1)(d) of the North Carolina Rules of Civil Procedure, as shown on Exhibit B.

5. Counsel for the State Board Defendants and the State of North Carolina accepted service, as shown on Exhibit C.

6. This Affidavit is made in accordance with Rule 4(j)(2) of the North Carolina Rules of Civil Procedure.

7. I affirm, under the penalties for perjury, that the foregoing representations are true.

This the 22nd day of November, 2021.




Stephen D. Feldman

North Carolina
County of Wake

Sworn to (or affirmed) and subscribed before me this the 22nd day of November, 2021.

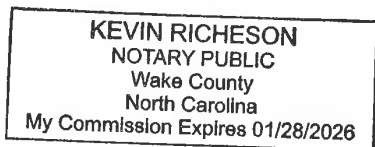
(Official Seal)



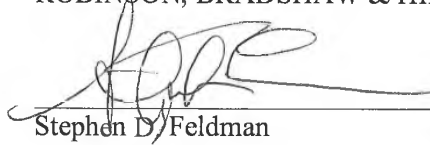
Official Signature of Notary

Kevin Richeson, Notary Public

My commission expires: 01/28/2026



ROBINSON, BRADSHAW & HINSON, P.A.

A handwritten signature in black ink, appearing to read 'Stephen D. Feldman', is written over a horizontal line.

Stephen D. Feldman
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
919.239.2603
Facsimile: 919.328.8790
North Carolina State Bar No. 34940
sfeldman@robinsonbradshaw.com

Adam K. Doerr
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
704.377.8114
Facsimile: 704.339.3414
North Carolina State Bar No. 37807
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
919.328.8826
Facsimile: 919.328.8787
North Carolina State Bar No. 50247
ezimmerman@robinsonbradshaw.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon each of the parties to this action by electronic mail to counsel at the e-mail addresses indicated below, in accordance with North Carolina Rule of Civil Procedure 5(b)(1)(a):

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggings
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
phillip.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
alyssa.riggings@nelsonmullins.com

Mark E. Braden*
Katherine McKnight*
Richard Raile*
Baker Hostetler LLP
1050 Connecticut Avenue, NW, Suite 1100
Washington, DC 20036
mbraden@bakerlaw.com
kmcknight@bakerlaw.com
rraile@bakerlaw.com


*Counsel for Defendants Representative
Destin Hall, Senator Warren Daniel,
Senator Ralph E. Hise, Jr., Senator Paul
Newton, Representative Timothy K. Moore,
and Senator Philip E. Berger.*

Terence Steed
Stephanie Brennan
Amar Majmundar
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27502-0629
tsteed@ncdoj.gov
sbrennan@ncdoj.gov
amajmundar@ncdoj.gov

*Counsel for Defendants the North Carolina
State Board of Elections, Damon Circosta,
Stella Anderson, Jeff Carmon III, Stacy
Eggers IV, Tommy Tucker, Karen Brinson
Bell; and the State of North Carolina*

** Pro hac vice motion forthcoming*

This the 22nd day of November, 2021.



Stephen Feldman

Exhibit A

FILED

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS INC. et al.,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, *in his
official capacity as Chair of the House
Standing Committee on Redistricting*, et al.,

Defendants.

IN THE GENERAL COURT OF JUSTICE
2021 NOV 22 10:00 AM
SUPERIOR COURT DIVISION

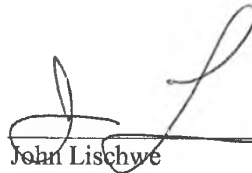
21-CVS-15426

WAKE CO., C.S.C.

BY _____

AFFIDAVIT OF JOHN LISCHWE


1. I, John Lischwe, am a courier for NOVA Office Strategies.
2. I submit this affidavit to attest that, on November 18, 2021, I hand-delivered complete physical copies of the summonses, complaint, and motion for preliminary injunction and supporting affidavits in this matter for Defendants Representative Hall, Senator Daniel, Senator Hise, Senator Newton, Speaker Moore, and President Pro Tempore Berger to the Attorney General by personally delivering them to the North Carolina Department of Justice at 114 West Edenton Street, Raleigh, NC 27603.

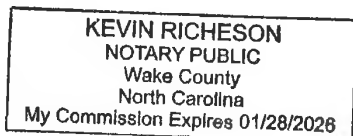

John Lischwe

Wake County, North Carolina

Sworn to (or affirmed) and subscribed before me this the 18th day of November, 2021.

(Official Seal)


Official Signature of Notary



Kevin Richeson, Notary Public

My commission expires: 01/28/2026

Exhibit B



November 19, 2021

Dear Customer,

The following is the proof-of-delivery for tracking number: 775253609467

Delivery Information:

Status:	Delivered	Delivered To:	Mailroom
Signed for by:	C. CRUZ	Delivery Location:	300 N SALISBURY ST
Service type:	FedEx Priority Overnight		
Special Handling:	Deliver Weekday		RALEIGH, NC, 27603
		Delivery date:	Nov 19, 2021 09:59

Shipping Information:

Tracking number:	775253609467	Ship Date:	Nov 18, 2021
		Weight:	5.0 LB/2.27 KG

Recipient:
Senator Paul Newton, North Carolina General Assembly
300 N SALISBURY ST
Room 300-C
RALEIGH, NC, US, 27603

Shipper:
Marilyn Baucom, Robinson Bradshaw and Hinson
101 North Tryon Street
Suite 1900
Charlotte, NC, US, 28246

Reference 97449.00011



Thank you for choosing FedEx



November 19, 2021

Dear Customer,

The following is the proof-of-delivery for tracking number: 775253431669

Delivery Information:

Status:	Delivered	Delivered To:	Mailroom
Signed for by:	C. CRUZ	Delivery Location:	300 N SALISBURY ST
Service type:	FedEx Priority Overnight		
Special Handling:	Deliver Weekday		RALEIGH, NC, 27601
		Delivery date:	Nov 19, 2021 09:59

Shipping Information:

Tracking number:	775253431669	Ship Date:	Nov 18, 2021
		Weight:	5.0 LB/2.27 KG

Recipient:
Representative Timothy K. Moore, North Carolina General Assembly
16 W JONES ST
Room 2304
RALEIGH, NC, US, 27601

Shipper:
Marilyn Baucom, Robinson Bradshaw and Hinson
101 North Tryon Street
Suite 1900
Charlotte, NC, US, 28246

Reference 97449.00011



Thank you for choosing FedEx



November 19, 2021

Dear Customer,

The following is the proof-of-delivery for tracking number: 775253735169

Delivery Information:

Status:	Delivered	Delivered To:	Mailroom
Signed for by:	C. CRUZ	Delivery Location:	300 N SALISBURY ST
Service type:	FedEx Priority Overnight		
Special Handling:	Deliver Weekday		RALEIGH, NC, 27603
		Delivery date:	Nov 19, 2021 09:59

Shipping Information:

Tracking number:	775253735169	Ship Date:	Nov 18, 2021
		Weight:	5.0 LB/2.27 KG

Recipient:
Senator Ralph E. Hise, Jr., North Carolina General Assembly
300 N SALISBURY ST
Room 300-A
RALEIGH, NC, US, 27603

Shipper:
Marilyn Baucom, Robinson Bradshaw and Hinson
101 North Tryon Street
Suite 1900
Charlotte, NC, US, 28246

Reference 97449.00011



Thank you for choosing FedEx



November 19, 2021

Dear Customer,

The following is the proof-of-delivery for tracking number: 775253552453

Delivery Information:

Status:	Delivered	Delivered To:	Mailroom
Signed for by:	C. CRUZ	Delivery Location:	300 N SALISBURY ST
Service type:	FedEx Priority Overnight		
Special Handling:	Deliver Weekday		RALEIGH, NC, 27601
		Delivery date:	Nov 19, 2021 09:59

Shipping Information:

Tracking number:	775253552453	Ship Date:	Nov 18, 2021
		Weight:	5.0 LB/2.27 KG

Recipient:
Representative Destin Hall, North Carolina General Assembly
16 W JONES ST
Room 2301
RALEIGH, NC, US, 27601

Shipper:
Marilyn Baucom, Robinson Bradshaw and Hinson
101 North Tryon Street
Suite 1900
Charlotte, NC, US, 28246

Reference 97449.00011



Thank you for choosing FedEx



November 19, 2021

Dear Customer,

The following is the proof-of-delivery for tracking number: 775253492590

Delivery Information:

Status:	Delivered	Delivered To:	Mailroom
Signed for by:	C. CRUZ	Delivery Location:	300 N SALISBURY ST
Service type:	FedEx Priority Overnight		
Special Handling:	Deliver Weekday		RALEIGH, NC, 27601
		Delivery date:	Nov 19, 2021 09:59

Shipping Information:

Tracking number:	775253492590	Ship Date:	Nov 18, 2021
		Weight:	5.0 LB/2.27 KG

Recipient:
Senator Philip E. Berger, North Carolina General Assembly
16 W JONES ST
Room 2007
RALEIGH, NC, US, 27601

Shipper:
Marilyn Baucom, Robinson Bradshaw and Hinson
101 North Tryon Street
Suite 1900
Charlotte, NC, US, 28246

Reference 97449.00011



Thank you for choosing FedEx



November 22, 2021

Dear Customer,

The following is the proof-of-delivery for tracking number: 775253879973

Delivery Information:

Status:	Delivered	Delivered To:	Mailroom
Signed for by:	C.CRUZ	Delivery Location:	300 N SALISBURY ST
Service type:	FedEx Priority Overnight		
Special Handling:	Deliver Weekday		RALEIGH, NC, 27603
		Delivery date:	Nov 22, 2021 09:29

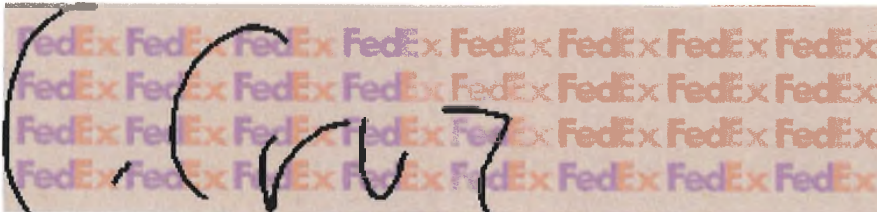
Shipping Information:

Tracking number:	775253879973	Ship Date:	Nov 18, 2021
		Weight:	5.0 LB/2.27 KG

Recipient:
Senator Warren Daniel, North Carolina General Assembly
300 N SALISBURY ST
Room 627
RALEIGH, NC, US, 27603

Shipper:
Marilyn Baucom, Robinson Bradshaw and Hinson
101 North Tryon Street
Suite 1900
Charlotte, NC, US, 28246

Reference 97449.00011



Thank you for choosing FedEx

Exhibit C

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS INC. et al.

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, *in his
official capacity as Chair of the House
Standing Committee on Redistricting*, et al.,

Defendants.

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21-CVS-15426

2021 NOV 22 P 1:35

WAKE CO., C.S.C.

BY

ACCEPTANCE OF SERVICE FOR THE
STATE BOARD DEFENDANTS AND THE
STATE OF NORTH CAROLINA

Defendants the North Carolina State Board of Elections; Chair Damon Circosta;
Secretary Stella Anderson; Members Jeff Carmon III, Stacy Eggers IV, and Tommy Tucker; and
Executive Director Karen Brinson Bell, in their official capacities (together, the "State Board
Defendants"), and the State of North Carolina, by and through counsel, hereby acknowledge that:

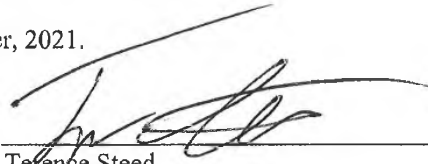
1. The State Board Defendants and the State of North Carolina are parties to be
served with the issued Civil Summonses, Plaintiffs' Verified Complaint; Plaintiffs' Motion for
Preliminary Injunction; and the Affidavits of Dr. Moon Duchin, Grace Liberman, and Stephen D.
Feldman (the "Documents") filed in this civil action;

2. By executing this Acceptance of Service, the undersigned counsel hereby accepts
service of the Documents on behalf of the State Board Defendants and the State of North
Carolina, and acknowledges receipt of a copy of each of the Documents filed in this action;

3. This Acceptance of Service is executed in accordance with Rule 4 of the North
Carolina Rules of Civil Procedure and shall have the same force and effect as would exist had
the process been served by personal delivery of a copy of the Documents; and

4. This acceptance of service does not waive any defenses that the State Board Defendants and the State of North Carolina may have, except the defense of insufficiency of process and insufficiency of service of process, and the State Board Defendants and the State of North Carolina reserve the right to assert any other defenses that may apply.

This 18 day of November, 2021.



Terence Steed
Special Deputy Attorney General
N.C. State Bar No. 52809
Email: tsteed@ncdoj.gov
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27502-0629
Telephone: 919-716-6567
Fax: 919-716-6763

Counsel for State Board Defendants and the State of North Carolina

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Case No. 21 CVS 500085

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS
OFFICIAL CAPACITY AS SENIOR CHAIR
OF THE HOUSE STANDING COMMITTEE
ON REDISTRICTING, *et al.*,

Defendants.

AFFIDAVIT OF SERVICE

The Affiant, Kimberly Stein, does hereby swear and depose the following:

1. I am a legal assistant for Patterson Harkavy LLP, attorneys for the Plaintiffs in the above-captioned action.
2. Copies of the Summons and Complaint were deposited with United Parcel Service (UPS) in a post-paid envelope for mailing, to each of the defendants.
3. Copies of the Summons and Complaint were sent by UPS to defendant Philip E. Berger addressed as follows:

Philip E. Berger
16 West Jones St.
Rm. 2007
Raleigh, NC 27601

4. They were in fact received by the addressee on November 22, 2021. Attached is the genuine tracking information.
5. Copies of the Summons and Complaint were sent by UPS to the defendant Warren Daniel, addressed as follows:

Warren Daniel
300 N. Salisbury St.
Rm. 6
Raleigh, NC 27603

6. They were in fact received by the addressee on November 22, 2021. Attached is the genuine tracking information.

7. Copies of the Summons and Complaint were sent by UPS to defendant Ralph E. Hise, Jr. addressed as follows:

Ralph E. Hise, Jr.
300 N. Salisbury St.
Rm. 3
Raleigh, NC 27603

8. They were in fact received by the addressee on November 22, 2021. Attached is the genuine tracking information.

9. Copies of the Summons and Complaint were sent by UPS to defendant Destin Hall addressed as follows:

Destin Hall
16 West Jones Street
Rm. 2301
Raleigh, NC 27601

10. They were in fact received by the addressee on November 22, 2021. Attached is the genuine tracking information.

11. Copies of the Summons and Complaint were sent by UPS to defendant Timothy K. Moore addressed as follows:

Timothy K. Moore
16 West Jones St.
Rm. 2304
Raleigh, NC 27601

12. They were in fact received by the addressee on November 22, 2021. Attached is the genuine tracking information.

13. Copies of the Summons and Complaint were sent by UPS to defendant Paul Newton addressed as follows:

Paul Newton
300 N. Salisbury St.
Rm. 3
Raleigh, NC 27603

14. They were in fact received by the addressee on November 22, 2021. Attached is the genuine tracking information.

15. Copies of the Summons and Complaint were sent by UPS to the process agent for defendants North Carolina Board of Elections, Jeff Cameron, Tommy Tucker, Stacy Eggers, Stella Anderson, and Damon Circosta, addressed as follows:


Katelyn Love
General Counsel
NC State Board of Elections
430 N. Salisbury St.
Suite 3128
Raleigh, NC 27603

16. They were in fact received by the addressee on November 22, 2021. Attached is the genuine acceptance of service.
17. Copies of the Summons and Complaint were sent by UPS to the Attorney General as agent for defendants Philip E. Berger, Timothy K. Moore, Paul Newton, Ralph Hise, Destin Hall, and Warren Daniel, addressed as follows:

Josh Stein
Attorney General
114 West Edenton Street
Raleigh, NC 27603

18. They were in fact received by the addressee on November 23, 2021. Attached is the genuine tracking information.

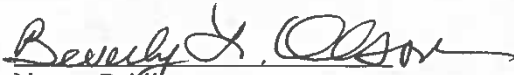
This the 23rd day of November, 2021.



Kimberly Stein

Sworn to and Subscribed before me

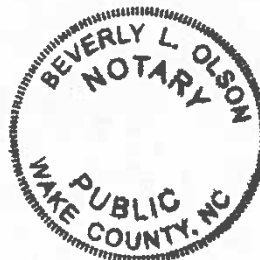
this the 23rd day of November, 2021.



Notary Public



Printed Name



My commission expires: May 12, 2024

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1ZFA25850398868564

Weight

1.00 LBS

Service

UPS Ground
with UPS Carbon Neutral 

Shipped / Billed On

11/19/2021

Delivered On

11/22/2021 9:38 A.M.

Delivered To

300 N SALISBURY ST
RALEIGH, NC, 27603, US

Received By

CRUZ

Left At

Dock

Reference Number(s)

NG - NAT REDISTRICTING

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 11/22/2021 1:18 P.M. EST

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1ZFA25850392208699

Weight

1.00 LBS

Service

UPS Ground
with UPS Carbon Neutral 

Shipped / Billed On

11/19/2021

Delivered On

11/22/2021 9:38 A.M.

Delivered To

300 N SALISBURY ST
RALEIGH, NC, 27603, US

Received By

CRUZ

Left At

Dock

Reference Number(s)

NG - NAT REDISTRICTING

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 11/22/2021 1:20 P.M. EST

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1ZFA25850394261903

Weight

1.00 LBS

Service

UPS Ground

with UPS Carbon Neutral

Shipped / Billed On

11/19/2021

Delivered On

11/22/2021 9:38 A.M.

Delivered To

300 N SALISBURY ST
RALEIGH, NC, 27603, US

Received By

CRUZ

Left At

Dock

Reference Number(s)

NG - NAT REDISTRICTING

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 11/22/2021 1:19 P.M. EST

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1ZFA25850395367137

Weight

1.00 LBS

Service

UPS Ground
with UPS Carbon Neutral 

Shipped / Billed On

11/19/2021

Delivered On

11/22/2021 9:38 A.M.

Delivered To

300 N SALISBURY ST
RALEIGH, NC, 27603, US

Received By

CRUZ

Left At

Dock

Reference Number(s)

NG - NAT REDISTRICTING

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 11/22/2021 1:20 P.M. EST

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1ZFA25850395483547

Weight

1.00 LBS

Service

UPS Ground
with UPS Carbon Neutral 

Shipped / Billed On

11/19/2021

Delivered On

11/22/2021 9:38 A.M.

Delivered To

300 N SALISBURY ST
RALEIGH, NC, 27603, US

Received By

CRUZ

Left At

Dock

Reference Number(s)

NG - NAT REDISTRICTING

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 11/22/2021 1:19 P.M. EST

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1ZFA25850395025354

Weight

1.00 LBS

Service

UPS Ground
with UPS Carbon Neutral 

Shipped / Billed On

11/19/2021

Delivered On

11/22/2021 9:38 A.M.

Delivered To

300 N SALISBURY ST
RALEIGH, NC, 27603, US

Received By

CRUZ

Left At

Dock

Reference Number(s)

NG - NAT REDISTRICTING

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 11/22/2021 1:19 P.M. EST

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1ZFA25850395329179

Weight

2.00 LBS

Service

UPS Ground
with UPS Carbon Neutral 

Shipped / Billed On

11/19/2021

Delivered On

11/22/2021 9:32 A.M.

Delivered To

430 N SALISBURY ST
3
RALEIGH, NC, 27603, US

Received By

WATKINS

Left At

Office

Reference Number(s)

NG - NAT REDISTRICTING

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 11/22/2021 1:16 P.M. EST

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1ZFA25850391653512

Weight

2.00 LBS

Service

UPS Ground
with UPS Carbon Neutral 

Shipped / Billed On

11/19/2021

Delivered On

11/23/2021 10:21 A.M.

Delivered To

114 W EDENTON ST
RALEIGH, NC, 27603, US

Received By

PERLMUTTER

UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS
UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS
UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS
UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS
UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS
UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS
UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS
UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS
UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS
UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS
UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS UPS

Left At

Mail Room

Reference Number(s)

NG - NAT REDISTRICTING

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 11/23/2021 10:41 A.M. EST

Respectfully submitted, this the 23rd day of November, 2021.



Narendra K. Ghosh, NC Bar No. 37649
nghosh@pathlaw.com
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
Tel: (919) 942-5200
Fax: (866) 397-8671

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document to defendants by U.S. mail, addressed as follows:

Warren Daniel
300 N. Salisbury Street Rm. 627
Raleigh, N.C. 27603

Paul Newton
300 N. Salisbury Street Rm. 312
Raleigh, N.C. 27603

David R. Lewis
16 West Jones Street Rm. 2301
Raleigh, N.C. 27601

Ralph E. Hise
300 N. Salisbury St. Rm. 300-A
Raleigh, N.C. 27603

Timothy K. Moore
16 West Jones Street Rm. 2304
Raleigh, N.C. 27601

Philip E. Berger
16 West Jones Street Rm. 2007
Raleigh, N.C. 27601

Katelyn Love
General Counsel
NC State Board of Elections
430 N. Salisbury St.
Suite 3128
Raleigh, NC 27603

This the 23rd day of November, 2021.


Narendra K. Ghosh

Electronically Filed
2021-11-30 13:44:54

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 21 CVS 500085

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

**PLAINTIFFS' MOTION FOR
A PRELIMINARY
INJUNCTION**

TABLE OF CONTENTS

	Page
INTRODUCTION	1
FACTUAL BACKGROUND.....	3
A. The General Assembly repeatedly enacts extreme gerrymanders.	3
B. The <i>Harper I</i> court preliminarily enjoins use of the 2016 plan in advance of the candidate filing period.	4
C. Legislative defendants enact another extreme gerrymander.....	5
D. The 2021 Plan packs and cracks Democratic voters in every district.....	8
E. The 2021 Plan is an intentional extreme partisan gerrymander.....	24
F. The 2021 Plan harms plaintiffs and other Democratic voters.....	29
ARGUMENT	30
I. Legal Standard	30
II. Plaintiffs are likely to succeed on the merits of their claims that the 2021 Plan violates the North Carolina Constitution.	31
A. The 2021 Plan violates North Carolina’s Free Elections Clause.....	31
B. The 2016 Plan violates North Carolina’s Equal Protection Clause.	36
C. The 2021 Plan violates North Carolina’s Freedom of Speech and Assembly Clauses.	40
1. The 2021 Plan unconstitutionally discriminates against protected expression and association.	41
2. The 2021 Plan unconstitutionally retaliates against protected expression and association.	44
D. All Plaintiffs have established a likelihood of standing.....	45
III. Plaintiffs are likely to suffer irreparable harm absent a preliminary injunction.	47
IV. There is adequate time to implement a remedy before the 2022 primaries.	48
V. The balance of equities strongly favors a preliminary injunction.....	49
CONCLUSION.....	51

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Council of Alternative Political Parties v. Hooks</i> , 121 F.3d 876 (3d Cir. 1997).....	43
<i>A.E.P. Indus., Inc. v. McClure</i> , 308 N.C. 393, 302 S.E.2d 754 (1983).....	26, 45
<i>Action NC v. Strach</i> , 216 F. Supp. 3d 597 (M.D.N.C. 2016)	41
<i>Auto Dealer Res., Inc. v. Occidental Life Ins. Co.</i> , 15 N.C. App. 634, 190 S.E.2d 729 (1972).....	27
<i>Common Cause v. Lewis</i> , No. 18 CVS 014001, 2019 WL 4569584 (N.C. Super. Ct. Sep. 3, 2019)	<i>passim</i>
<i>Common Cause v. Rucho</i> , 318 F. Supp. 3d 777 (M.D.N.C. 2018)	32
<i>Covington v. North Carolina</i> , 316 F.R.D. 117 (M.D.N.C. 2016), <i>aff'd</i> 137 S. Ct. 2211 (2017).....	3
<i>Davis v. New Zion Baptist Church</i> , 811 S.E.2d 725 (N.C. Ct. App. 2018).....	40
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976).....	43
<i>Erfer v. Commonwealth</i> , 794 A.2d 325 (Pa. 2002)	43
<i>Goldston v. State</i> , 361 N.C. 26, 637 S.E.2d 876 (2006).....	40, 41
<i>Harris v. McCrory</i> , 159 F. Supp. 3d 600 (M.D.N.C. 2016)	3
<i>Harper v. Lewis</i> , No. 19-CVS-012667 (N.C. Super. Ct. Oct. 28, 2019)	<i>passim</i>

<i>Holmes v. Moore</i> , 270 N.C. App. 7, 840 S.E.2d 244 (2020).....	33
<i>League of Women Voters of N.C. v. North Carolina</i> , 769 F.3d 224 (4th Cir. 2014)	44
<i>People ex rel. Van Bokkelen v. Canaday</i> , 73 N.C. 198 (1875)	27
<i>Staton v. Russell</i> , 151 N.C. App. 1, 565 S.E.2d 103 (2002).....	46
<i>Triangle Leasing Co. v. McMahon</i> , 327 N.C. 224, 393 S.E.2d 854 (1990)	26, 43

Constitutional Provisions

N.C. Const., art. I, § 10.	1, 27
N.C. Const., art. I, § 12	1, 38
N.C. Const., art. I, § 14	1, 36
N.C. Const., art. I, § 19	1, 31

Pursuant to N.C. R. Civ. P. 65 and N.C. Gen. Stat. § 1-485, Plaintiffs hereby move for a preliminary injunction (1) barring Defendants from administering, preparing for, or moving forward with the 2022 primary and general elections for the U.S. House of Representatives using the 2021 congressional redistricting plan; and (2) setting forth a remedial process to create a new plan that complies with the North Carolina Constitution, including a court-ordered remedial plan if the General Assembly fails timely to enact a new plan that comports with the North Carolina Constitution. In support of this motion, Plaintiffs state as follows:

INTRODUCTION

Partisan gerrymandering, where partisan mapmakers manipulate district boundaries to predetermine the outcome of elections before anyone casts a ballot, erodes the integrity of our democracy by diluting the voting power of certain citizens based on their party affiliation, past votes, and political beliefs. It is also incompatible with the North Carolina Constitution. By predetermining election outcomes, partisan gerrymandering violates the Free Election Clause’s guarantee that elections shall be conducted “to ascertain, fairly and truthfully, the will of the people—the qualified voters.” *Common Cause v. Lewis*, No. 18-CVS-014001, 2019 WL 4569584, at *109-110 (N.C. Super. Ct. Sep. 3, 2019) (quoting *Hill v. Skinner*, 169 N.C. 405, 415, 86 S.E. 351, 356 (1915)); *see also* Decl. of Lalitha Madduri (“Madduri Decl.”), Ex. A, Order Granting Mot. for Prelim. Inj. at 7, *Harper v. Lewis*, No. 19-CVS-012667 (N.C. Super. Ct. Oct. 28, 2019) (“*Harper I*”) (same). And by reducing the voting power of citizens based on ideological and partisan differences, partisan gerrymandering is irreconcilable with the North Carolina Constitution’s guarantees that the State shall not deny to any person the equal protection of the laws, *see* N.C. Const., art. I, § 19, and that the State shall not punish citizens based on their speech or expression, *see id.*, art. I, §§ 12, 14.

The General Assembly’s new congressional plan (the “2021 Plan”) violates the constitutional rights of millions of North Carolina citizens. This is one of the most closely divided states in the country. But as Plaintiffs’ expert testimony makes abundantly clear, the 2021 Plan is engineered to guarantee that Republicans will win 10 or 11 of North Carolina’s 14 congressional seats in nearly every conceivable political environment. Indeed, Democrats would need to win the statewide popular vote by an astonishing 7 percentage points to win just *half* of North Carolina’s congressional districts. The 2021 Plan, by design, ensures that the will of North Carolina voters will never truthfully be reflected in the state’s congressional delegation.

This Court’s immediate intervention is required to avoid irreparable injury to millions of North Carolina voters. As a three-judge panel of this Court explained in 2019 in granting a preliminary injunction against use of the gerrymandered 2016 congressional plan, “[t]he loss to Plaintiffs’ fundamental rights guaranteed by the North Carolina Constitution will undoubtedly be irreparable if congressional elections are allowed to proceed under” gerrymandered districts. *Harper I*, slip op. at 14. And that deprivation of fundamental rights “outweighs the potential harm[s]” likely to be identified by the Legislative Defendants here, such as “disruption, confusion, and uncertainty in the electoral process for them, candidates, election officials, and the voting public.” *Id.* at 15. Now, as then, preliminary injunctive relief is necessary to ensure that North Carolina administers its congressional elections under a map that ensures that elections fairly and truthfully reflect the will of the people.

FACTUAL BACKGROUND

A. The General Assembly repeatedly enacts extreme gerrymanders.

North Carolina is one of the most closely divided states in the country. Nevertheless, over the past decade, the General Assembly has repeatedly enacted extreme gerrymanders that guarantee an overwhelming majority of safe Republican seats in the General Assembly and in Congress. As a result of these unlawful gerrymanders, “[t]he voters of this state, since 2011, have been subjected to a dizzying succession of litigation over North Carolina’s legislative and Congressional districts in state and federal courts.” *Common Cause*, 2019 WL 4569584, at *1.

The General Assembly repeatedly gerrymandered North Carolina’s congressional districts following the 2010 decennial census. A three-judge federal district court struck down the 2011 congressional map as racially gerrymandered in violation of the Fourteenth Amendment’s Equal Protection Clause and ordered the General Assembly to draw a remedial map. *See Harris v. McCrory*, 159 F. Supp. 3d 600, 604-05 (M.D.N.C. 2016). The General Assembly then illegally gerrymandered the remedial plan (the “2016 Plan”), prompting a three-judge panel of this Court to issue a preliminary injunction barring use of that plan. *See Harper I*, slip op. at 18; *infra* pp. 4-5.

The General Assembly repeatedly gerrymandered North Carolina’s state legislative districts as well. A three-judge federal district court held that the 2011 state legislative maps enacted by the General Assembly were racially gerrymandered in violation of the Fourteenth Amendment’s Equal Protection Clause. *Covington v. North Carolina*, 316 F.R.D. 117, 124-25 (M.D.N.C. 2016), *aff’d* 137 S. Ct. 2211 (2017). And a three-judge panel of this Court later held that the remedial legislative districts drawn by the General Assembly after *Covington* were unlawful partisan gerrymanders. *See Common Cause*, 2019 WL 4569584, at *3.

B. The *Harper I* court preliminarily enjoins use of the 2016 plan in advance of the candidate filing period, finding it to be an extreme partisan gerrymander.

On September 27, 2019, the same Plaintiffs here filed a lawsuit challenging the 2016 Plan as an extreme partisan gerrymander in violation of the Free Elections Clause, Equal Protection Clause, and Free Speech and Assembly Clauses of the North Carolina Constitution. *Harper I*, slip op. at 1. A three-judge panel was appointed days later, and the plaintiffs promptly moved for a preliminary injunction. *Id.* at 2. The *Harper I* court ordered expedited briefing, ensuring that it would resolve the plaintiffs’ motion for preliminary relief in advance of the December 2, 2019 commencement of the candidate filing period for the 2020 congressional primaries. *Id.*

On October 28, 2019, the court granted a preliminary injunction barring use of the 2016 Plan in the 2020 elections. *Id.* at 18. The court held that the plaintiffs were likely to succeed on the merits of their claims that the 2016 Plan, designed to “give a partisan advantage to 10 Republicans and 3 Democrats,” violated the Free Elections Clause, Equal Protection Clause, and Freedom of Speech and Assembly Clauses. *Id.* at 13-14. It further held that “[t]he loss to Plaintiffs’ fundamental rights guaranteed by the North Carolina Constitution will undoubtedly be irreparable if congressional districts are allowed to proceed under the 2016 congressional districts.” *Id.* at 14. And the court explained that this harm to North Carolina voters outweighed potential concerns about “disruption, confusion, and uncertainty in the electoral process.” *Id.* at 15.

In mid-November 2019, the General Assembly enacted a remedial plan. The court *sua sponte* enjoined the candidate filing period pending its review of that remedial map. Madduri Decl., Ex. B, Order Enjoining Filing Period at 1-2, *Harper v. Lewis*, No. 19-CVS-012667 (N.C. Super. Ct. Nov. 20, 2019). At a hearing on December 2, 2019, the court declined to resolve whether the 2019 Plan was constitutional. *See* Madduri Decl., Ex. C, Hr’g Tr. at 7:23-8:8, *Harper v. Lewis*, No. 19-CVS-012667 (N.C. Super. Ct. Dec. 2, 2019) (“*Harper I* Summ. J. Hr’g Tr.”). In doing so,

the court expressed its “fervent hope that the past 90 days” since the filing of the *Harper I* case would become “a foundation for future redistricting in North Carolina and that future maps are crafted through a process worthy of public confidence and a process that yields elections that are conducted freely and honestly to ascertain fairly and truthfully the will of the people.” *Id.* at 9:3-8.

C. Legislative defendants enact another extreme gerrymander.

North Carolina gained a fourteenth congressional seat following the 2020 census after seeing its population grow by 9.5% over the previous decade. *See* North Carolina: 2020 Census, U.S. Census Bureau (Aug. 25, 2021).¹ Several of the most populous counties in the state have grown even more rapidly: Wake County grew by 22.6%, Mecklenburg by 20.3% Durham by 18.4%, and Guilford by 9.7%. Overall, more than 78% of North Carolina’s population growth came from the Triangle area and the Charlotte metro area. Madduri Decl., Ex. G, Expert Rep. of Christopher Cooper at 8 (“Cooper Rep.”).

On August 12, 2021, the House Committee on Redistricting and the Senate Committee on Redistricting and Elections adopted criteria to guide the enactment of new maps. While the adopted criteria provide that “[p]artisan considerations and election results data *shall not* be used in the drawing of districts in the 2021 Congressional, House, and Senate plans,” they freely permitted the use of “local knowledge of the character of communities and connections between communities,” as well as “[m]ember residence.” Madduri Decl., Ex. D, House Committee on Redistricting & Senate Committee on Redistricting and Elections, Criteria Adopted by the Committees (Aug. 12, 2021) (the “2021 Adopted Criteria”). Unlike the 2016 criteria, which provided that “[r]easonable efforts shall be made not to divide a county into more than two

¹ Available at <https://www.census.gov/library/stories/state-by-state/north-carolina-population-change-between-census-decade.html>.

districts,” Madduri Decl., Ex. E, Joint Committee on Redistricting, 2016 Contingent Congressional Plan Committee Adopted Criteria (the “2016 Adopted Criteria”), the 2021 Adopted Criteria contained no similar limitation. *See* 2021 Adopted Criteria at 1-2. The 2021 Adopted Criteria were otherwise materially identical to the 2016 Adopted Criteria.

On October 6, 2021, legislators began drawing potential maps for consideration by the House and Senate Committees. Despite *Harper I’s* admonition to use a transparent process that would follow the adopted criteria and eschew the use of election data, the process that followed was designed to produce another partisan gerrymander. Legislative Defendants sought to instill public confidence in that preordained result by requiring legislators to draw and submit maps using software on computer terminals in the redistricting committee hearing rooms. Madduri Decl., Ex. F, *Hearing Before the House Committee on Redistricting*, 2021 Leg., 155th Sess. 3:1-20 (N.C. 2021) (statement of Rep. Destin Hall, Chairman, H. Comm. on Redistricting) (“Oct. 5, 2021 H. Redistricting Comm. Hr’g Tr.”). According to Defendant Hall, Chairman of the House Redistricting Committee, North Carolinians could be confident in the process because that software did not include political data, and the House and Senate Committees would only consider maps drawn and submitted on the software. Oct. 5, 2021 H. Redistricting Comm. Hr’g Tr. at 52:3-8.

But there was an obvious and intentional loophole that rendered that supposed restriction meaningless. Legislators asked Chairman Hall if the Committees would prevent legislators from simply bringing prohibited political data—or maps drawn by political consultants using prohibited political data—with them into the map-drawing room. Chairman Hall responded that the Committees did not intend to prevent this practice, and made clear that he interpreted the 2021 Adopted Criteria to allow the use of political data in the drawing of maps so long as the data were

not loaded onto the computer terminals.

CHAIRMAN HALL: And on these computers in this room, you essentially are bound by that criteria because there is no racial data or election data that's loaded into these computers.

REPRESENTATIVE HARRISON: But it seems like if you come in, and you might have the material with you, it might not be actually loaded in the software, but you might actually have [it] with you. I just didn't know if there was some way to enforce that, or how you plan to do that?

CHAIRMAN HALL: I don't plan to search every member who comes into this committee room, nor do I want to do that . . . So, you know, members . . . are free to handle those issues as they see fit, but they will follow the criteria in the sense that that data is not in these computers.

Oct. 5, 2021 H. Redistricting Comm. Hr'g Tr. at 52:18-53:13 (emphasis added); *see also id.* at 66:11-66:16 (Representative Reives asserting that this process “sounds [like] an easy get around, in a legal sense, around the criteria that we've set up”); *id.* at 66:17 (Chairman Hall responding: “I don't think I have the ability to police members of this committee, nor do I want to . . . I know I'm not going to bring in a map and sit down and draw it, but you know, the reality is, we're elected officials.”).

Various legislators proposed solutions like not allowing legislators to have maps with them at the computer terminals or requiring members to disclose if they were copying maps drawn by external political consultants. *Id.* at 54:21-25, 67:25-68-3. Chairman Hall rejected these proposals. *Id.* at 55:4-6, 68:4-25; *see also id.* at 70:2-7 (Chairman Hall: “I think it ultimately results in the best path forward to just say, you know, look folks, the map you draw has got to be the one that you do in here and nowhere else. And that's up to the members and their integrity as to how they want to handle that.”). And he tacitly acknowledged that legislators had already been presented with maps drawn by outside political consultants. *Id.* at 61:19-23 (Representative Hawkins: “I want to make sure that there have been no maps drawn outside of this building that any of us have

been privy to. Can we say that unequivocally that that’s been the case?”); *id.* at 61:24-62:2 (“I can’t speak for other members of this committee. What I’ll say is that I have not contributed to the drawing of any map, at all.”).

Legislative Defendants also held public hearings to discuss the map-drawing process primarily in Republican counties while carefully avoiding more heavily Democratic areas. And they ignored public testimony submitted during these hearings that would have resulted in fair representation for North Carolinians. For example, residents in the Sandhills overwhelmingly asked that their communities be united in one congressional district centered in Cumberland County. Cooper Rep. at 8. But the 2021 Plan disregards this request by dividing the Sandhills communities among three different congressional districts, diluting their influence and further inhibiting the ability to coalesce around preferred candidates.

This process predictably resulted in the Republican-controlled Redistricting Committees choosing a map that produced 10 safe Republican seats, 3 safe Democratic seats, and 1 competitive seat. *See* Cooper Rep. at 1. The 2021 Plan was voted out of the Senate Committee as Senate Bill 740 on November 1. It was then voted out of the House Committee on November 3. The full Senate and House passed the 2021 Plan on November 2 and November 4, respectively, on strict party-line votes. *See* Charles Duncan, *Redistricting in NC: New Maps Approved, Favoring GOP*, Spectrum News 1 (Nov. 4, 2021).²

D. The 2021 Plan packs and cracks Democratic voters in every district.

The 2021 Plan meticulously packs and cracks Democratic voters in each and every district—without exception. Dr. Christopher Cooper, the Robert Lee Madison Distinguished

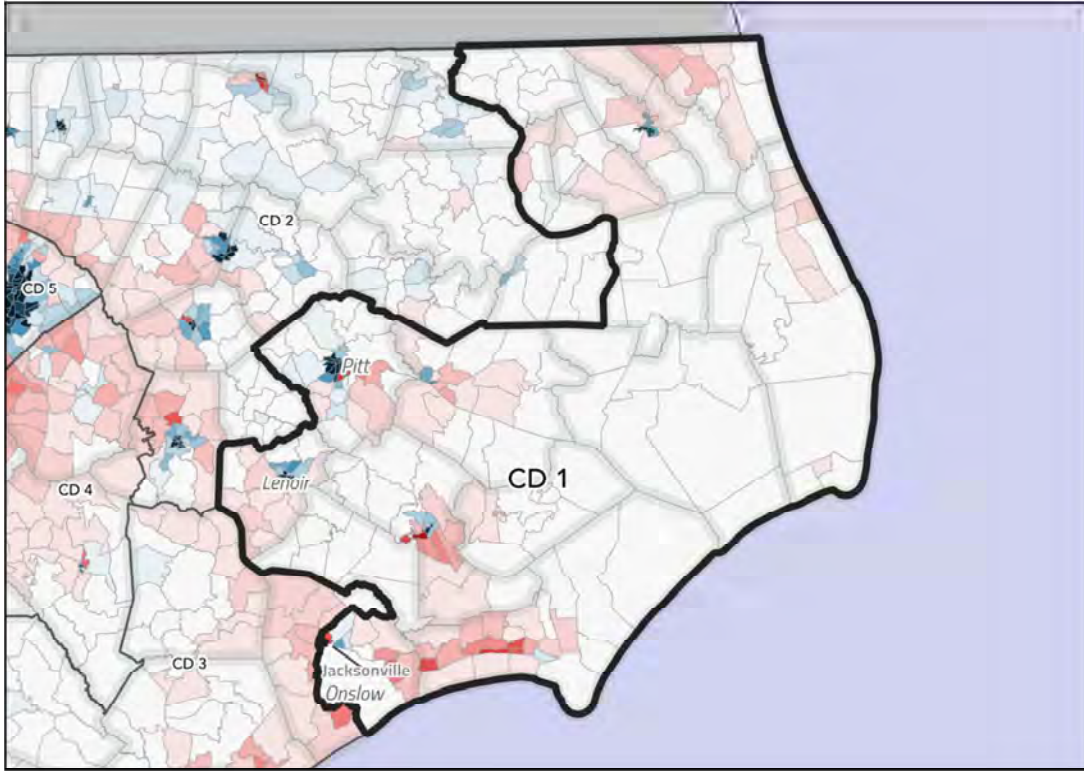
² Available at <https://spectrumlocalnews.com/nc/charlotte/politics/2021/11/04/redistricting-in-n-c---new-maps-approved--favoring-gop>.

Professor of Political Science and Public Affairs at Western Carolina University, describes the packing and cracking in his expert report. Dr. Cooper has been a professor at Western Carolina University since 2002 and is an expert in North Carolina’s elections, political geography, and political history. Dr. Cooper was accepted as an expert in *Common Cause v. Lewis*, where the court found his analysis “persuasive” and gave it “great weight.” *Common Cause*, 2019 WL 4569584, at *17, 43.³

Congressional District 1

Legislative Defendants drew District 1 to be a safe Republican seat while undermining Democratic voting strength in the neighboring District 2—the predecessor of which was a Democratic-leaning seat represented by Congressman G.K. Butterfield. District 1, which is mostly comprised of District 3 in the 2019 Plan, receives nearly all of Pitt County’s Democratic VTDs from Congressman Butterfield’s former district (District 1 under the 2019 Plan), including the entire city of Greenville as shown below.

³ The images reproduced below from Professor Christopher Cooper’s Expert Report show each district’s boundaries and the partisanship of its VTDs using a composite of the results of the 2020 North Carolina Attorney General and 2020 North Carolina Labor Commissioner races, with darker blue shading for the VTDs that voted more heavily Democratic, darker red for VTDs that voted more heavily Republican, and lighter shading for VTDs that were closer to a tie—with the shading adjusted for the VTD’s population.



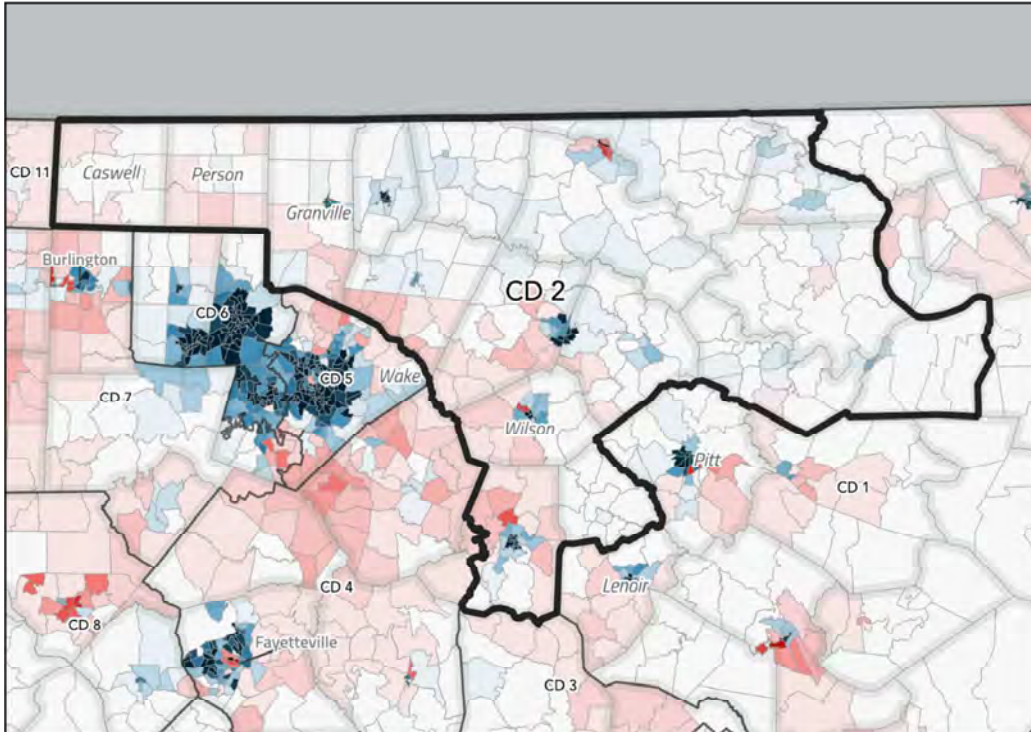
The upshot of Legislative Defendants’ engineering is a safe Republican seat where Democratic voters have no meaningful chance of electing the candidate of their choice. The PVI⁴ of this district is R+10 and no Democratic member of Congress represents a district that leans so heavily Republican. Cooper Rep. at 8.

Congressional District 2

District 2 was a Democratic district under both the 2016 and 2019 Plans. The 2021 Plan significantly improves Republicans’ voting strength in the district by removing the Democratic stronghold of Greenville from Congressman Butterfield’s district and placing it into the new District 1. Legislative Defendants further undermined Democratic voting strength in this district by expanding the boundaries of its predecessor westward, stretching nearly 200 miles from the east to encompass the Republican strongholds of Caswell and Person Counties. In addition to

⁴ PVI refers to the Cook Political Report’s Partisan Voting Index, a standard bipartisan metric of the expected “lean” of a district using a composite of past elections. Cooper Rep. at 4.

producing a clear partisan shift toward Republicans, “the district is difficult to understand from a communities of interest perspective,” as it “no longer includes any of Pitt County nor the campus of East Carolina University, which provided much of the economic engine of the [predecessor] district, and now stretches from the Albemarle Sound to the Raleigh Durham-Chapel Hill MSA.” *Id.* at 10. Dr. Cooper concludes that the new district “splits communities in important ways.” *Id.*

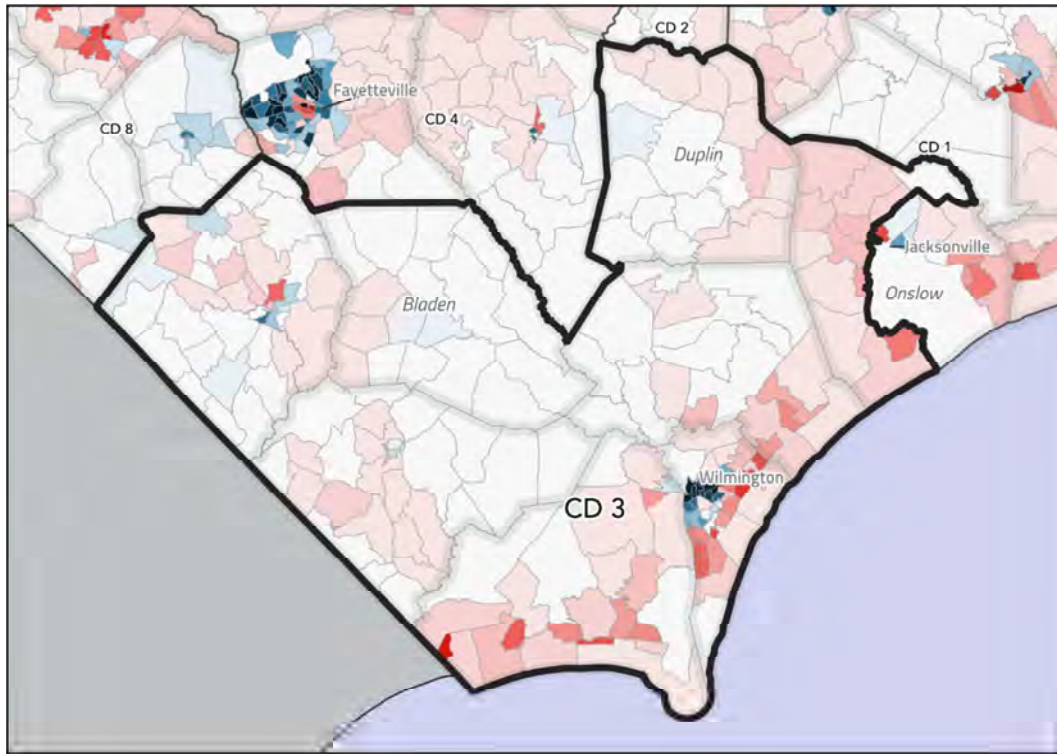


Legislative Defendants succeeded in eliminating a Democratic district: While the prior congressional district in this area had a D+12 PVI, making it a safe Democratic seat, the PVI of the new District 2 is “even.” *Id.* at 10.

Congressional District 3

Ignoring the repeated calls of constituents to place the competitive Sandhills region in a single congressional district, the 2021 Plan splits it across Districts 3, 4, and 8. The plan creates a safe Republican seat in District 3 by combining the eastern part of the region with counties along the southeastern coastline. *Id.* at 12. The eastern boundary hews around the relatively Democratic

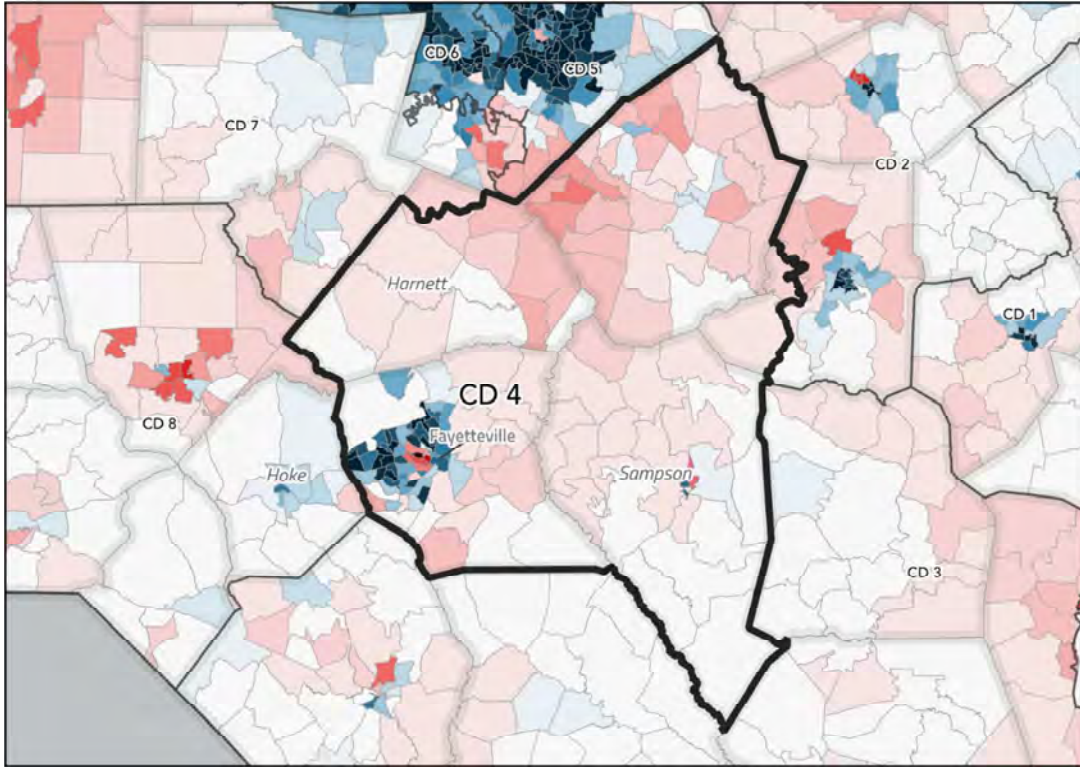
city of Jacksonville, which is instead placed in District 1 where its residents have no realistic prospect of electing a Democratic candidate.



District 3 is indeed a safe Republican seat: The PVI of District 3 is R+10 and Donald Trump won the district with more than 58% of the vote in 2020. *Id.* at 12.

Congressional District 4

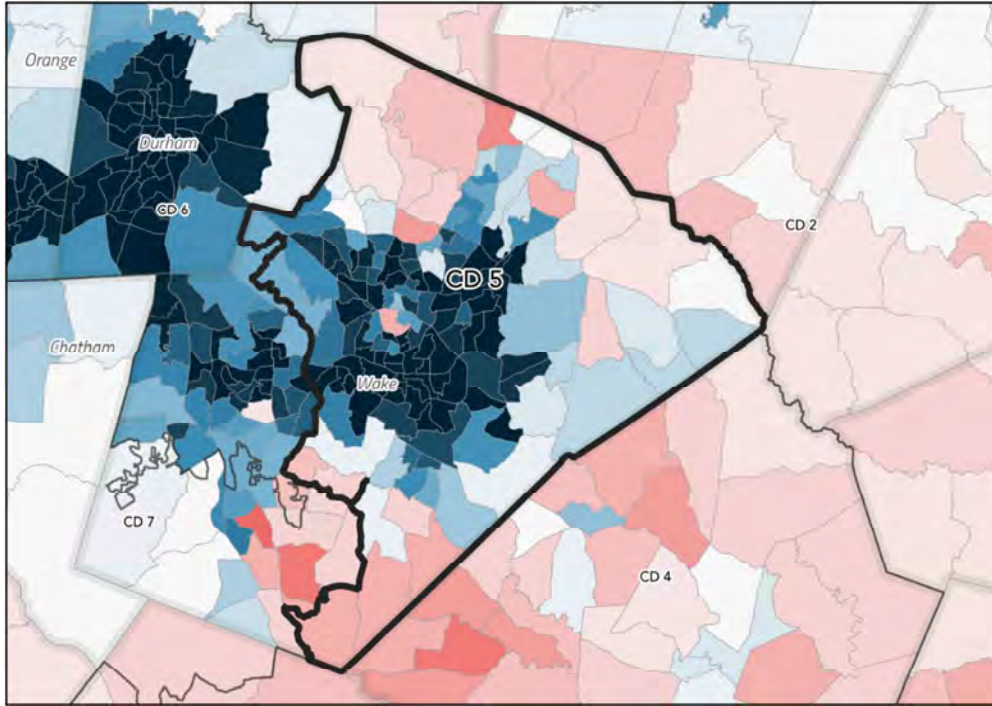
Legislative Defendants likewise engineered District 4 to be a safe Republican seat that destroys the voting power of Democrats in Cumberland County—home to Fayetteville and Fort Bragg. District 4 combines the Democratic stronghold of Cumberland County with overwhelmingly Republican counties of Johnston and Harnett. The district also picks up Republican VTDs in Wayne County. *Id.* at 12.



As expected, the new District 4 is a Republican district. District 4 has a PVI of R+5, and Donald Trump won 53% of the vote in the 2020 Presidential Election. *Id.* at 4, 14.

Congressional District 5

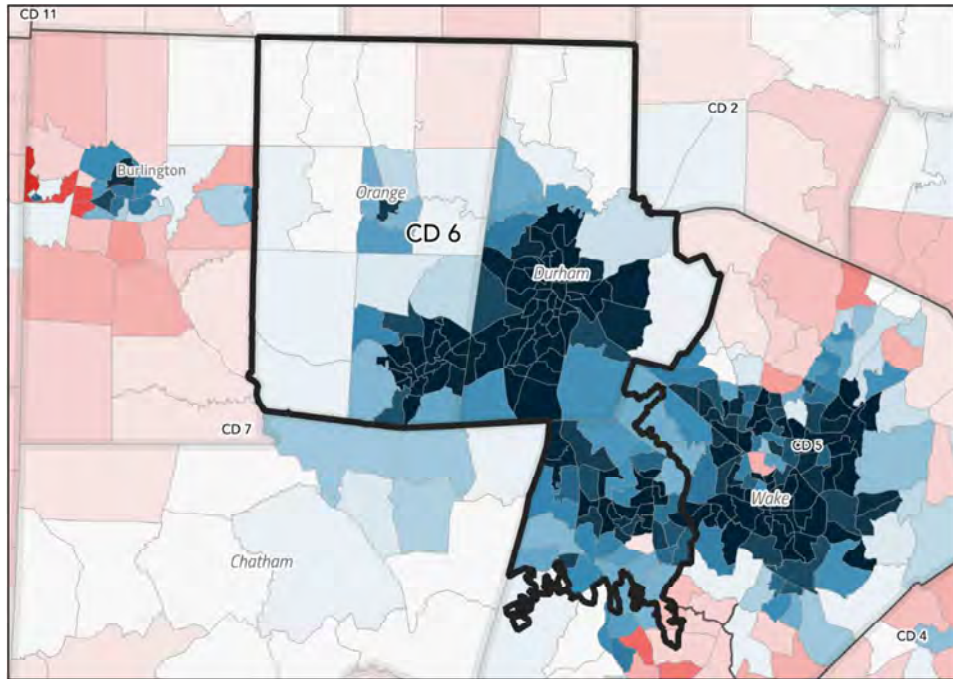
District 5 is the result of flagrant packing and cracking of Democratic voters in the largest Democratic stronghold in the state—Wake County. The 2021 Plan packs these voters by creating a single, safe Democratic district—District 5—out of most of Wake County, including all of its most Democratic VTDs. It then splits the remaining Wake County Democratic voters into two neighboring districts to dilute their power: Voters in Cary and Apex are packed into the safe Democratic District 6, which contains heavily Democratic Orange and Durham Counties, while the remaining population is roped into the overwhelmingly Republican District 7, which stretches west across the state to pick up heavily Republican Randolph County and parts of Davidson and Guilford Counties. Wake County is split between three districts, “despite the fact that there is no population-based reason to divide” it three times. *Id.* at 3; *see also id.* at 16, 18, 20.



Legislative Defendants succeeded in creating an overwhelmingly safe Democratic district in which Republican voters have no meaningful chance to elect a candidate of their choice: District 5 has a PVI of +12 and Donald Trump won only 34% of the vote here in the 2020 presidential election. *Id.* at 4, 16.

Congressional District 6

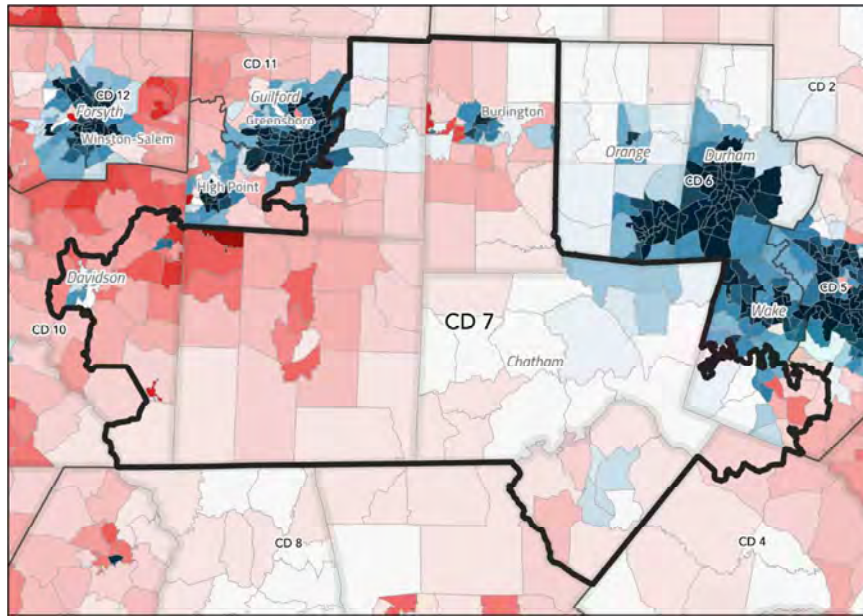
Legislative Defendants packed Democratic voters into District 6 to create a safe Democratic seat. They did so by combining the heavily Democratic Orange and Durham Counties into a single district. District 6 also includes a heavily Democratic swath of voters from the fractured Wake County. *Id.* at 18. This pairing is comparable to the way in which these areas were packed in the 2016 plan. “This district packs a greater proportion of Democratic voters in a single district than any district from” the 2019 Plan. *Id.* at 18.



Republicans have no chance to win this district, and Republican voters in this district have no chance of representation from a member of their own party. District 6 is a D+22 district, and Donald Trump won only 25% of the vote here in 2020. *Id.* at 18.

Congressional District 7

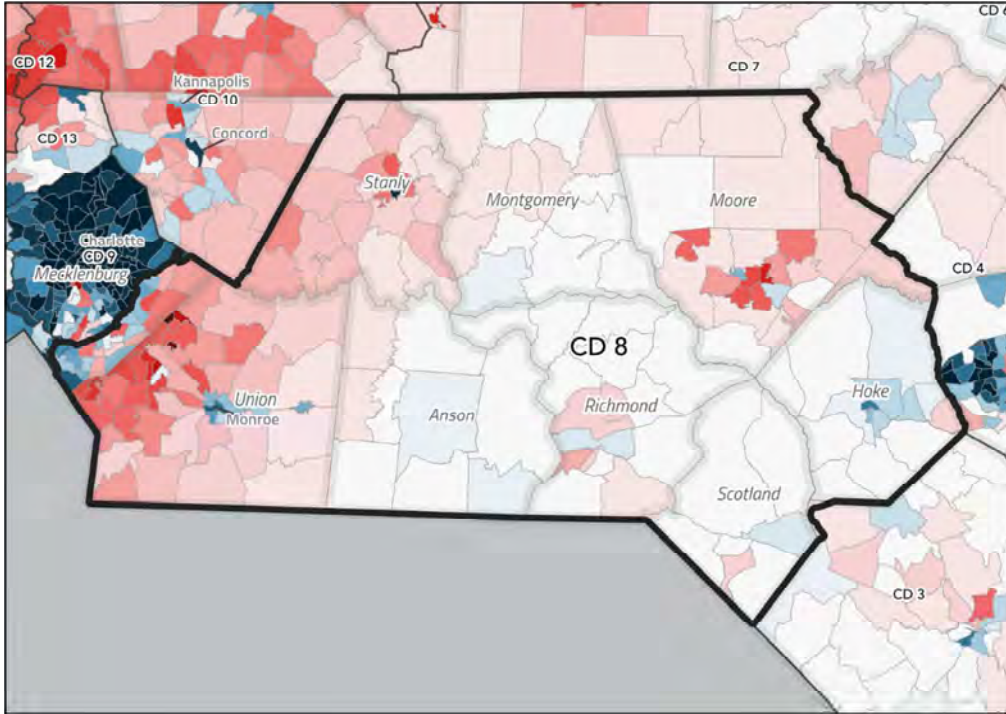
Legislative Defendants created a safe Republican seat in District 7 by fracturing the Democratic stronghold of Guilford County. District 7 stitches together Democratic voters from the southeastern portion of Greensboro and Guilford County, along with Chatham County and Democratic-leaning voters from the fractured Wake County, with heavily Republican Randolph, Alamance, and Lee Counties. District 7 also borrows heavily Republican VTDs from Davidson County in the western part of the district. “Despite including portions of two of the most Democratic counties in North Carolina, the district studiously avoids the Democratic-leaning areas of both counties.” *Id.* at 20.



Democrats have no meaningful chance of electing a candidate of their choice in the new District 7: District 7 has a PVI of R+11 and Donald Trump won 57% of the vote in this district during the 2020 presidential election. *Id.* at 20.

Congressional District 8

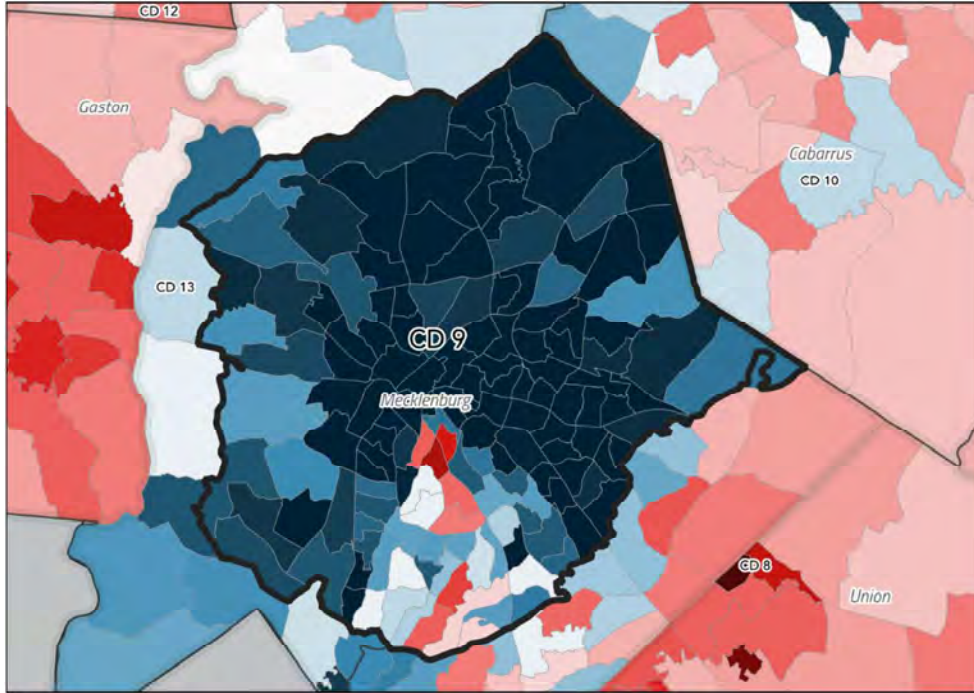
Legislative Defendants created a safe Republican seat in District 8 by combining Democratic-leaning Hoke and Anson Counties with heavily Republican Union, Moore, Montgomery, and Stanly Counties. As discussed in greater detail below, Legislative Defendants also included portions of heavily Democratic Mecklenburg County in District 8, splitting Charlotte and ensuring that Democratic votes in that county would be wasted in this safe Republican seat. *Id.* at 22.



District 8 performs as expected: The Cook Political Report calls it an R+11 District, and Donald Trump won 57% of the vote in the new District 8. *Id.* at 14, 22.

Congressional District 9

District 9, a guaranteed Democratic district capturing a carefully hewn chunk of Charlotte, reflects flagrant packing of Democratic voters in heavily Democratic Mecklenburg County. As discussed earlier, Legislative Defendants divided this Democratic stronghold into three districts: many (but not all) of Mecklenburg County’s most Democratic VTDs are packed into District 9. The rest of Mecklenburg’s Democratic voters are meticulously cracked between District 8 and District 13. *Id.* at 24.

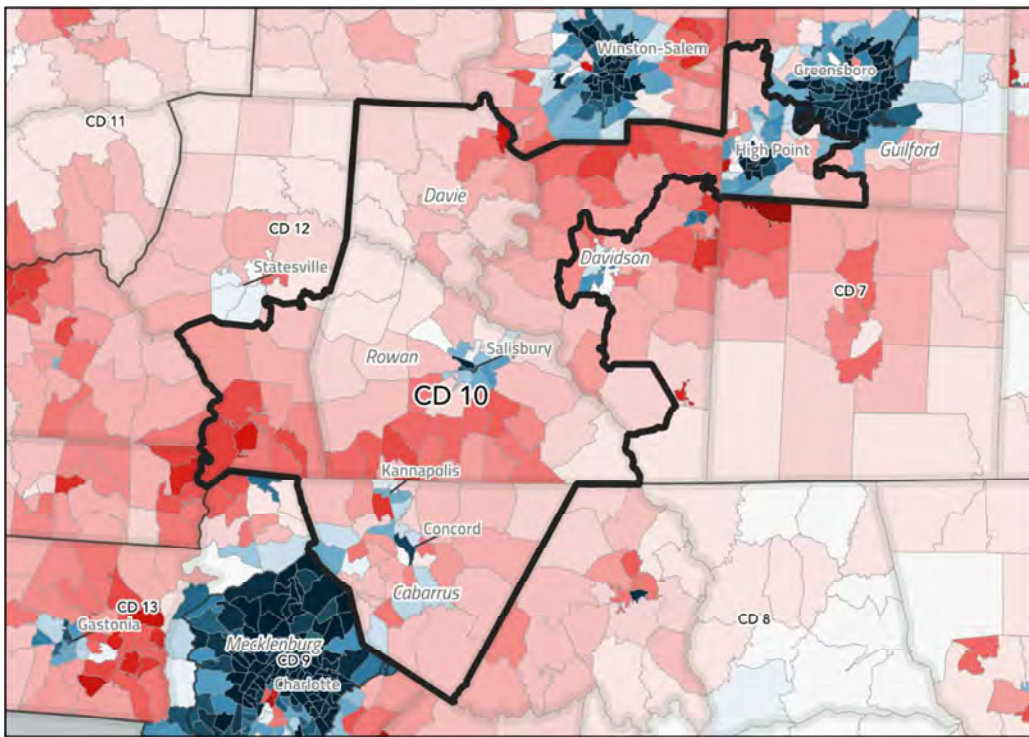


By creating a safe Democratic seat in District 9, “Republican voters will be more efficiently distributed across other districts, where they can affect the outcome.” *Id.* at 24. But that also “has the effect of ensuring that Republican voters in [District 9] have no chance of securing representation from a member of their own party.” *Id.* Donald Trump won 25% of the vote in this district in 2020. *Id.* at 24.

Congressional District 10

As discussed, Legislative Defendants cracked Guilford County—one of the largest Democratic counties in the state—among three safe Republican districts, ensuring that all Democratic votes in Guilford County are wasted. District 10, the southeastern district in the tripartite split, groups the heavily Democratic voters in High Point with the overwhelmingly Republican neighboring counties of Davidson, Cabarrus, Rowan, and Davie. District 10 in the 2021 Plan thus closely resembles District 13 in the 2016 Plan, which similarly paired High Point and other Democratic Guilford County voters with several of the same Republican counties to the west. As Dr. Cooper explains: “The enacted NC-10 includes High Point, while NC-11 includes

most of Greensboro and NC-12 contains Winston-Salem, meaning that the enacted map splits all three points of North Carolina’s Piedmont Triad into separate congressional districts that favor Republicans. In the current map, this community of interest is together in NC-6, represented by Democrat Kathy Manning.” *Id.* at 26. Confirming that this area constitutes a well-recognized community of interest, the Piedmont Triad shares an airport, a local television market with common local news channels, and a weekly newspaper—the Triad Business Journal—that focuses on business developments in Greensboro, High Point, and Winston-Salem.⁵



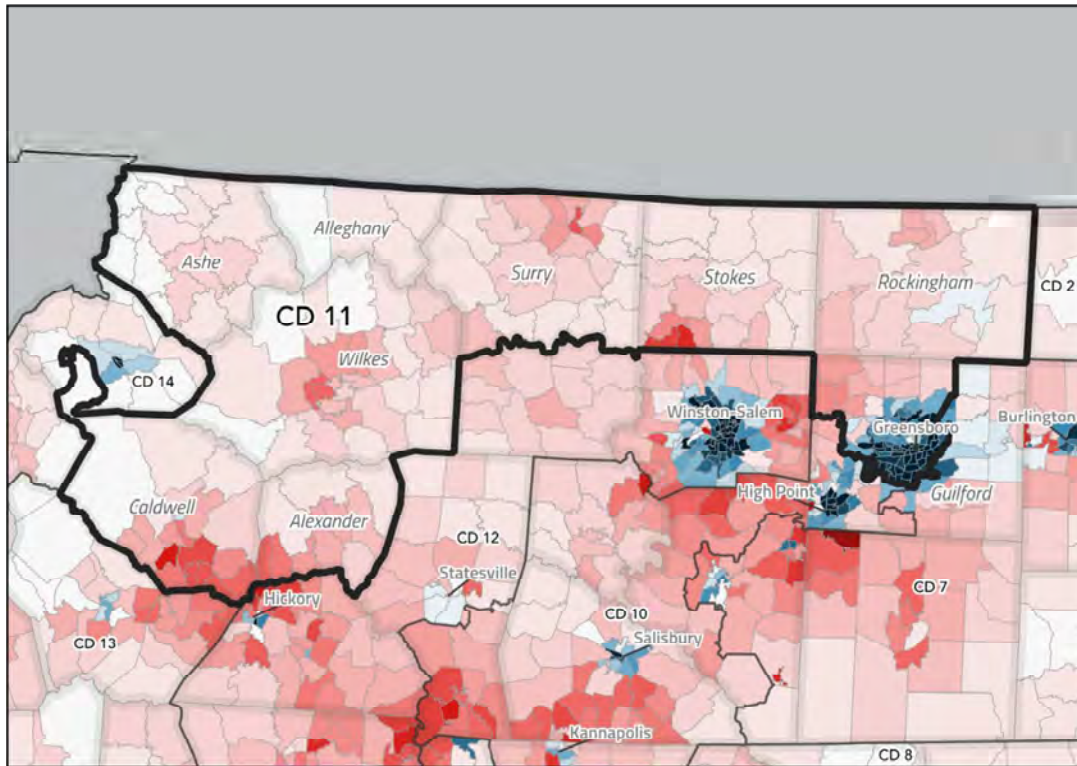
Legislative Defendants succeeded in creating another seat where Democratic voters in High Point, Salisbury, Kannapolis, Concord, and Cabarrus have no realistic possibility of electing a member of their own party: District 10 has an R+14 PVI and Donald Trump won over 60% of the Presidential vote here in 2020. *Id.* at 26.

⁵ See Greensboro/Winston-Salem/High-Point News, Triad Bus. J (last accessed Nov. 30, 2021), available at <https://www.bizjournals.com/triad/news/>.

Congressional District 11

Evoking a handgun aiming eastward, District 11 takes the third portion of the fractured Guilford County—including much of the heavily Democratic city of Greensboro—and combines it with heavily Republican counties in the northwestern part of the state, dividing the communities of interest in the Piedmont Triad while ensuring that Greensboro’s Democratic voters have no influence in this safe Republican district. District 11 also cuts out a bizarre, boot-like bit of Watauga County to encompass the residential address of Republican incumbent Congresswoman Virginia Foxx, placing her in the same district as Congresswoman Manning. District 11 thus takes the same basic approach as District 5 in the 2016 Plan, but swaps Guilford’s Democratic voters in for those in Forsyth County.

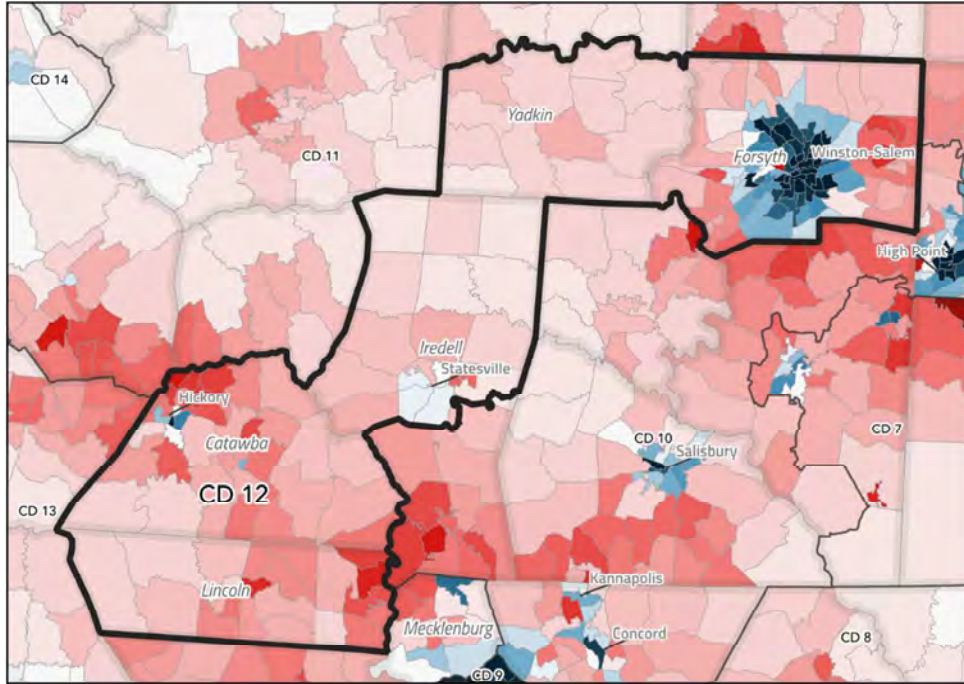
District 11 has little in the way of shared interests: “Geographically, [District 11] span[s] radically different parts of the state.” *Id.* at 28. “The corners of the district have different area codes, are served by different media markets, and share virtually no characteristics in common other than the fact that they are both within North Carolina.” *Id.*



As expected, the new District 11 is a safe Republican seat: The PVI is R+9 and Donald Trump won 57% of the vote here in 2020. *Id.* at 28.

Congressional District 12

District 12 pieces together heavily Democratic Forsyth County, including Winston-Salem, with four heavily Republican counties to the south and west. District 12 also splits Iredell County in half with District 10, and fences in the Democratic cities of Statesville and Hickory. The result is a safe Republican district that effectively guarantees that Democratic voters in Winston-Salem, Statesville, and Hickory cannot elect a candidate of their choice.

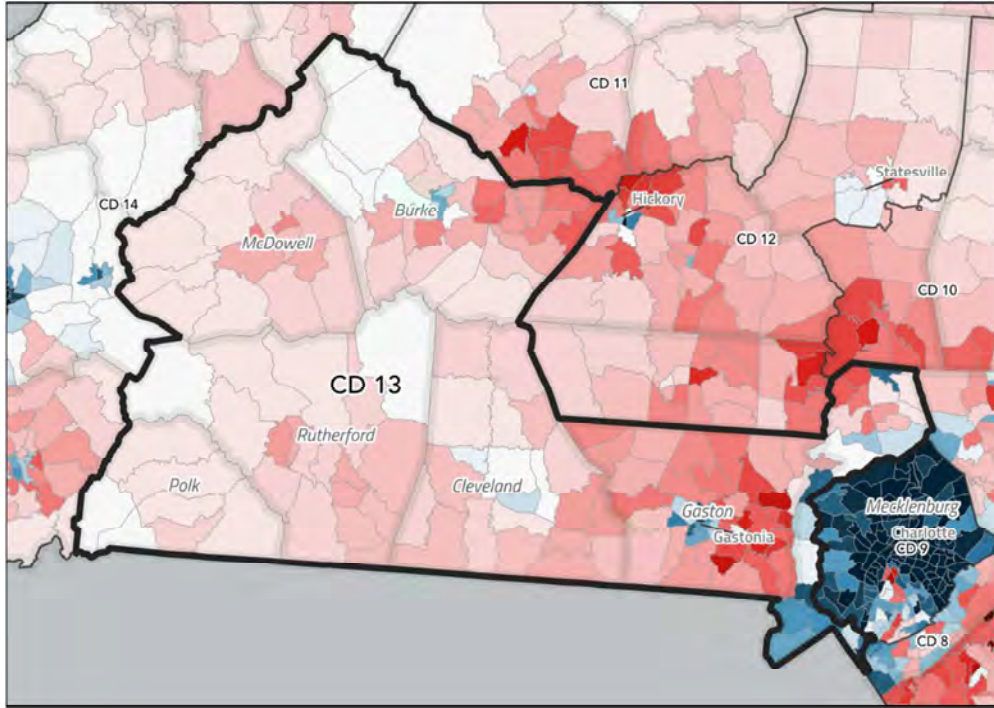


The PVI of District 12 is R+9 and Donald Trump won over 56% of the vote here in 2020.

Id. at 30.

Congressional District 13

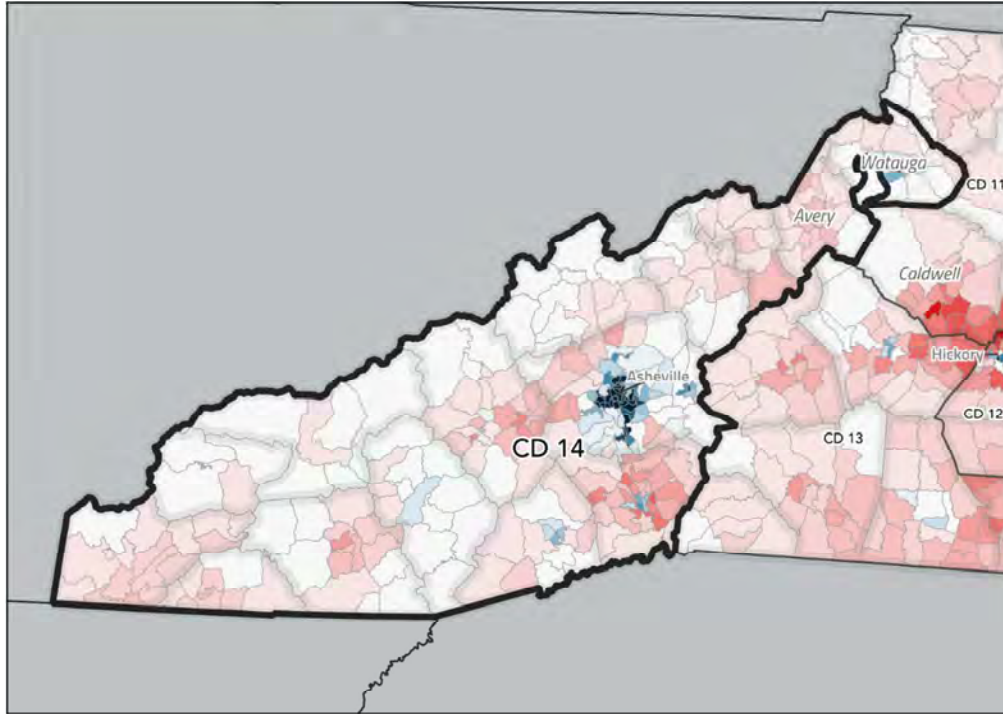
Akin to District 10 in the 2016 Plan, Legislative Defendants created a safe Republican seat in District 13 by combining voters from the cracked Mecklenburg County and from Gastonia with heavily rural and Republican counties to the west. While two incumbents are double bunked in neighboring District 11, no incumbent resides in District 13, which includes Defendant Speaker Moore’s residence. Republican Congressman Madison Cawthorne recently announced he would run in District 13, prompting Speaker Moore to announce that he would stay in the General Assembly. *Id.* at 32.



The new District 13 performs as expected: The District has a PVI of R+13 and Donald Trump won 60% of the vote here in the 2020 election. *Id.* at 32.

Congressional District 14

Finally, similar to District 11 in the 2016 Plan, Legislative Defendants created a safe Republican seat in District 14 by capturing heavily Republican counties in the western part of the state, pairing them with Asheville’s Democratic voters to ensure that they cannot elect a candidate of their choice. District 14 pairs Watauga County and Buncombe for the first time since the 1870s and meticulously avoids the Watauga County boot covering Republican incumbent Virginia Foxx. *Id.* at 34.



Democrats have little chance of electing a candidate of their choice here: Donald Trump won 53% of the vote here in 2020 and District 14 has an R+7 PVI. *Id.* at 4, 34.

E. The 2021 Plan is an intentional extreme partisan gerrymander.

Expert analysis confirms that the 2021 Plan is an intentional, extreme partisan gerrymander that dilutes Democratic votes and prevents Democratic voters from electing candidates of their choice. Dr. Cooper concluded:

After analyzing the characteristics of the map as a whole as well as the characteristics of each district in isolation, it is clear that the enacted map will increase the number of Republican members of Congress and decrease the number of Democratic members of Congress in North Carolina's congressional delegation. Democratic voters in the vast majority of the districts will have no chance at representation from a member of their own party and Republican voters in the districts that pack Democrats will have no chance of representation from a member of their own party. This is not a result of natural packing, or geographic clustering, but rather because the congressional district lines shifted in ways that, taken together, benefit the Republican Party. Not only does the enacted map create a substantial partisan advantage for which there is no apparent explanation other than gerrymandering, but it unnecessarily splits communities of interest and will alters representational linkages in ways that, in some cases, have never been seen in North Carolina's history.

Cooper Rep. at 36.

Expert statistical analysis is in accord:

Dr. Jowei Chen

Dr. Jowei Chen is a professor of political science at the University of Michigan. He is one of the “foremost political science scholars on the question of political geography and how it can impact the partisan composition of a legislative body,” and “helped pioneer the methodology of using computer simulations to evaluate the partisan bias of a redistricting plan.” *Common Cause*, 2019 WL 4569584, at *15. Dr. Chen produced a set of computer-simulated plans for North Carolina’s congressional districts by following the 2021 Adopted Criteria. Madduri Decl., Ex. H, Expert Rep. of Jowei Chen at 4 (“Chen Rep.”). “By randomly drawing districting plans with a process designed to strictly follow non-partisan districting criteria, the computer simulation process gives us an indication of the range of districting plans that plausibly and likely emerge when map-drawers are not motivated primarily by partisan goals.” *Id.* at 5. And by comparing the 2021 Plan against the simulated plans with respect to partisan measurements, Dr. Chen was able to determine the extent to which a map-drawer’s subordination of nonpartisan districting criteria, such as geographic compactness and preserving political subdivision boundaries, was motivated by partisan goals. *Id.* at 5. Dr. Chen employed a similar analysis in *Common Cause*, and the court gave “great weight to Dr. Chen’s findings” and adopted his conclusions. *Common Cause*, 2019 WL 4569584, at *18.

Dr. Chen found that the Enacted Plan fails to follow three of the 2021 Adopted Criteria’s mandated districting principles—minimizing county splits, minimizing voting district splits, and maximizing district compactness—and produces levels of partisan bias that are an extreme

statistical anomaly when compared against the 1,000 computer-simulated maps that were randomly generated in accordance with the 2021 Adopted Criteria. Specifically, the Enacted Plan contains 14 county splits, which is more than are contained in any of the 1,000 computer-simulated maps. Chen Rep. at 11. The Enacted Plan splits 25 voting districts, which is nearly double the 13 voting district splits achieved by all 1,000 computer-simulated maps. *Id.* at 14. And of the two common measurements of district compactness, the Enacted Plan scores worse than 100% of simulated maps on the Polsby-Popper score and worse than 97.7% of the simulated maps on the Reock score. *Id.* at 16.

These deviations from the 2021 Adopted Criteria helped enable severe levels of partisan bias that are apparent by any measure. Dr. Chen found that seven of the districts in the Enacted Plan have a more extreme partisan distribution than was observed in 100% of their corollary districts in the simulated maps, and three additional districts have a more extreme partisan distribution than was observed in at least 95% of the simulated maps. *Id.* at 27-28. Notably, for *each* of these 11 outlier districts, the extreme partisan distribution occurs in the direction that benefits Republicans. *Id.*. What’s more, the Enacted Plan contains ten districts that are safely Republican without being excessively packed with Republican voters—that is, they contain a Republican vote share between 52.9% and 61.2%. *Id.* at 28. Of the 1,000 simulated plans created using the partisan-blind computer algorithm, *none* create 10 seats within this coveted range; instead, the vast majority of simulated maps create only between two to six seats with this favorable vote share. *Id.* at 29. Consistent with these results, Dr. Chen found the Enacted Plan contains fewer competitive districts than 94.2% of the simulated maps, and fewer Democratic districts than 96.6% of the simulated maps. *Id.* at 30-32.

Finally, Dr. Chen compared the Enacted Plan to the 1,000 plans produced by his computer simulations along common measures of partisan bias, including the mean-median difference (which measures how skewed the median-performing district is in favor of the advantaged party), the efficiency gap (which measures how many more votes are “wasted” by the disadvantaged party), and the lopsided margins measure (which measures the extent to which the disadvantaged party’s voters are packed into a small number of districts that are won by a lopsided margin). *Id.* at 34-44. Analysis of each of these measures demonstrates that the Enacted Plan is an extreme statistical outlier in its bias toward the Republican Party, which is unexplainable by North Carolina’s political geography or by compliance with the 2021 Adopted Criteria. *Id.* Based on these findings, Dr. Chen concluded that partisanship predominated in the drawing of the Enacted Plan and subordinated the prescribed districting criteria of avoiding county splits, minimizing voting district splits, and achieving geographic compactness. *Id.*

Dr. Wesley Pegden

Dr. Wesley Pegden is an associate professor in the Department of Mathematical Sciences at Carnegie Mellon University, and an expert in probability. Dr. Pegden employs a mathematically rigorous form of sensitivity analysis to determine whether a map is carefully crafted to achieve a particular partisan outcome, and to determine the likelihood that mapmakers who were not considering partisanship would have landed on that map. Dr. Pegden’s method works by starting with the enacted plans, using a computer algorithm making a sequence of billions or trillions of small random changes to the maps—i.e., swapping precincts at the edge of each district—while respecting nonpartisan districting principles, and then evaluating the partisan characteristics of the resulting comparison maps. Madduri Decl., Ex. I, Expert Rep. of Wesley Pegden at 2-3 (“Pegden Rep.”). Dr. Pegden has described his method, and the mathematical theorems proving that the

method can rigorously identify outliers, in multiple peer-reviewed publications. Dr. Pegden applied this same analysis to North Carolina’s legislative maps in *Common Cause v. Lewis*, and the court gave “great weight to Dr. Pegden’s testimony, analysis, and conclusions.” 2019 WL 4569584, at *42. The basic intuition behind Dr. Pegden’s work is that if a map was not intentionally crafted to maximize partisan advantage, making tiny random changes around the edges should not significantly decrease the plan’s partisan bias.

For his initial analysis, Dr. Pegden did 32 runs starting from the initial map, making 34 billion random changes for each run. Pegden Rep. at 2, 4-5. He required the maps generated by his random changes to have comparable population deviation and compactness, and no more precinct splits and county traversals than the enacted map. *Id.* at 2. Dr. Pegden then did 3 more sets of 32 runs, adding additional conditions, including protecting the same incumbents as the enacted plan. *Id.* at 5-6. Dr. Pegden compared the partisan characteristics of the enacted map to the partisan characteristics of his generated maps by calculating the number of seats Republicans would win in each map, on average, if a random “uniform swing” was repeatedly applied to the 2020 Attorney General results. *Id.* at 3. The idea, well known and widely used by redistricting experts, is to take a basic historical distribution of votes across the state and then uniformly swing the votes in each precinct in favor of the Republicans or Democrats to account for how a map would perform in better and worse years for each party.

In each of Dr. Pegden’s 32 initial runs using the criteria of compactness, population equality, precinct splits, and county traversals, the enacted map showed more pro-Republican partisan bias than 99.9989% of the comparison maps generated by the algorithm making tiny random changes. The results were similar for his runs using additional conditions. *Id.* at 5-6.

For the next step of analysis, Dr. Pegden used mathematical theorems he developed and published in peer-reviewed journals to translate the results described above into a rigorous statement about how the enacted plan compares against *all* other possible districtings of North Carolina satisfying the nonpartisan districting criteria. *Id.* at 2, 3. Applying those theorems, Dr. Pegden found that, for each of his four sets of 32 runs, the enacted map is more carefully crafted for partisan advantage than at least 99.9935% of all possible plans. *Id.* at 5-6. On the basis of this analysis, Dr. Pegden concluded that the 2021 Plan “is optimized for Republican partisan bias to an extreme degree, more so than 99.99% of all alternative districtings satisfying the” nonpartisan redistricting criteria. *Id.* at 6.

F. The 2021 Plan harms plaintiffs and other Democratic voters.

Plaintiffs in this action are North Carolina voters who reside in Congressional districts gerrymandered under the 2021 Plan. Each Plaintiff consistently votes for Democratic congressional candidates. *See* Madduri Decl., Exs. J-U, Plaintiff Affidavits. The 2021 Plan harms Plaintiffs and other Democratic voters in North Carolina by packing and cracking them to reduce their electoral influence.

Plaintiffs Jackson Thomas Dunn and Virginia Walters Brien each reside in District 9 under the 2021 Plan. *See* Madduri Decl., Ex. L. Plaintiffs John Anthony Balla and Rebecca Harper reside in Districts 5 and 6 under the 2021 Plan, respectively. *See id.* Madduri Decl., Exs. J, P. The 2021 Plan dilutes the voting power of these Plaintiffs and other Democratic voters by placing them into these packed districts. *See supra* pp. 8-23. The 2021 Plan dilutes the voting power of the remaining Plaintiffs—Amy Clare Oseroff, Donald Rumph, Richard R. Crews, Lily Nicole Quick, Gettys Cohen, Jr., Shawn Rush, Mark S. Peters, Kathleen Barnes, and David Dwight Brown—by placing them into cracked districts. *See* Madduri Decl., Exs. K, M, N, O, Q, R, S, T, U. The 2021 Plan

fractures Democratic voters across these cracked districts to ensure that each district will remain reliably Republican.

ARGUMENT

I. Legal Standard

A preliminary injunction should issue if (1) the plaintiff can “show likelihood of success on the merits of his case,” (2) the plaintiff “is likely to sustain irreparable loss unless the injunction is issued,” and (3) a “balancing of the equities” supports injunctive relief. *Triangle Leasing Co. v. McMahon*, 327 N.C. 224, 227, 393 S.E.2d 854, 856-57 (1990); *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 400, 302 S.E.2d 754, 759 (1983). The Court in *Harper I* applied these standards to grant a preliminary injunction barring the use of the 2016 Plan in the 2020 elections. *Harper I*, slip op. at 11-14.

When assessing the preliminary injunction factors, the Court “should engage in a balancing process, weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted.” *Id.* at 11 (quoting *Williams v. Greene*, 36 N.C. App. 80, 86 (1978)). “In effect, the harm alleged by the plaintiff must satisfy a standard of relative substantiality as well as irreparability.” *Id.*

As set forth in greater detail below, preliminary relief should issue here just as it did in 2019. Legislative Defendants have enacted another extreme gerrymander in defiance of the *Harper I* court’s directive that “future maps [be] crafted through a process worthy of public confidence and a process that yields elections that are conducted freely and honestly to ascertain fairly and truthfully the will of the people.” *Harper I* Summ. J. Hr’g Tr. at 9:3-8. Like in 2019, administrative deadlines for the upcoming elections are fast approaching. And like in 2019, “the case is urgent and the right is clear.” *Auto Dealer Res., Inc. v. Occidental Life Ins. Co.*, 15 N.C. App. 634, 639, 190 S.E.2d 729, 732 (1972).

II. Plaintiffs are likely to succeed on the merits of their claims that the 2021 Plan violates the North Carolina Constitution.

Plaintiffs are likely to succeed on their claims in this case for the same reasons that led the *Harper I* court to grant a preliminary injunction against the 2016 Plan. The 2021 Plan plainly violates the North Carolina Constitution’s Free Elections Clause, Equal Protection Clause, and Freedom of Speech and Assembly Clauses.

A. The 2021 Plan violates North Carolina’s Free Elections Clause.

The Free Elections Clause of the North Carolina Constitution declares that “[a]ll elections shall be free.” N.C. Const., art. I, § 10. The Free Elections Clause, which has no parallel in the U.S. Constitution, reflects that “[o]ur government is founded on the will of the people. Their will is expressed by the ballot.” *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 220 (1875). It traces back to a similar provision of the 1689 English Bill of Rights, which sought to prevent the King from manipulating the electorate to achieve “electoral advantage” in parliamentary elections. J.R. Jones, *The Revolution of 1688 in England* 148 (1972). But North Carolina’s version is stronger than its historical analogue. After initially providing that elections “ought to be free,” the state in 1968 amended the Clause to direct that all elections “*shall*” be free, “mak[ing] clear” that the right to free elections, like the other rights secured to the people by the Declaration of Rights, “are commands and not mere admonitions.” *N.C. State Bar v. DuMont*, 304 N.C. 627, 635, 639, 286 S.E.2d 89, 97 (1982) (internal quotations omitted).

North Carolina courts have thus interpreted the Free Elections Clause to require “that elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Common Cause*, 2019 WL 4569584, at *110. And in interpreting the state constitution, the North Carolina Supreme Court has directed that courts “should keep in mind that this is a

government of the people, in which the will of the people—the majority—legally expressed, must govern.” *State ex rel. Quinn v. Lattimore*, 120 N.C. 426, 428, 26 S.E. 638, 638 (1897).

“[P]artisan gerrymandering ... strikes at the heart of” these principles. *Common Cause*, 2019 WL 4569584, at *112. Extreme partisan gerrymanders—i.e., “redistricting plans that entrench politicians in power, that evince a fundamental distrust of voters by serving the self-interest of political parties over the public good, and that dilute and devalue votes of some citizens compared to others”—are “contrary to the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Harper I*, slip op. at 7. The *Harper I* court applied these principles to hold that Plaintiffs were likely to succeed on the merits of their claim that the 2016 Plan—which was designed to ensure 10 safe Republican seats and 3 safe Democratic seats—was an extreme partisan gerrymander that prevented congressional elections from reflecting the popular will. *Id.* at 7, 12-13.

The 2021 Plan, too, violates the Free Elections Clause. North Carolina is one of the most closely divided states in the country. Yet the 2021 Plan guarantees a lopsided Republican congressional delegation no matter how the people vote. The plan “is expected to produce 3 Democratic wins, 10 Republican wins, and 1 competitive seat.” Cooper Rep. 1-2; *see also* Princeton Gerrymandering Project, North Carolina 2021 CST-13 Final Congressional Map (similar, and giving the 2021 Plan an overall grade of “F” for Partisan Fairness).⁶ The margin in this new congressional plan is virtually identical to the 2016 Plan that was preliminarily enjoined in *Harper I*, which was designed to produce 3 Democratic seats and 10 Republican seats. *Harper I*, slip op. at 12-13. And critically, the 2021 Plan is designed to guarantee a Republican majority even if there are major shifts in the political wind. *See* Cooper Rep. at 3; Chen Rep. at 28.

⁶ Available at <https://gerrymander.princeton.edu/reforms/NC>.

Entrenchment of that magnitude violates “the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.”

Harper I, slip op. at 7.

This extreme partisan advantage is the result of deliberate packing and cracking of Democratic voters throughout the state. The 2021 Plan dilutes Democratic voting power principally by splitting each of the three largest counties in North Carolina—which are also the three most heavily Democratic areas in the state—across three districts, “despite the fact that there is no population-based reason to split them this many times.” Cooper Rep. at 1. And the packing and cracking in the 2021 Plan is not limited to these three Democratic strongholds. As discussed, *supra* pp. 8-23, the lines of *every district* are carefully manipulated to ensure that Republican voters are efficiently distributed throughout the state while Democratic voters are distributed in a manner that largely wastes their votes. Cooper Rep. at 3-20. “Given that nothing has changed since the last map in terms of electoral behavior or political geography, it is difficult to understand how these changes could be a result of anything other than gerrymandering.” *Id.* at 1.

That conclusion is reinforced by the expert analyses of Dr. Jowei Chen and Dr. Wes Pegden. Dr. Chen found the Enacted Plan unnecessarily deviates from at least three of the 2021 Adopted Criteria’s requirements and achieves severe levels of partisan bias that are extremely rare—and often non-existent—in simulated plans that are drawn without regard to partisan advantage. *See supra* pp. 23-28; Chen Rep. at 45. For example, the 2021 Plan includes more Republican voters in the six districts that should be most competitive than is seen in nearly 100% of the simulated maps. Chen Rep. at 24. As a result, he found that “[b]y subordinating traditional districting criteria, the General Assembly’s Enacted Plan was able to achieve partisan goals that could not otherwise have been achieved under a partisan-neutral districting process that follows

the Adopted Criteria.” *Id.* Thus Dr. Chen concluded that the Enacted Plan is “an extreme partisan outlier.” *Id.* Dr Pegden’s simulations similarly showed that the 2021 Plan showed more partisan bias than 99.99% or more of the comparison maps generated by making tiny random changes, and indeed more partisan bias than 99.99% of *all* possible plans satisfying the nonpartisan redistricting criteria. *See supra* p. 24; Pegden Rep. at 6. As Dr. Pegden concluded, the 2021 Plan “is optimized for Republican bias to an extreme degree.” Pegden Rep. at 6.

Like in *Harper I*, Legislative Defendants obtained this outcome by engineering a redistricting process at the committee level to guarantee that the General Assembly would enact a partisan gerrymander. The *Harper I* court observed that Legislative Defendants adopted criteria requiring map-drawers to “use . . . political data to draw a map that would maintain the existing partisan makeup of the state’s congressional delegation” of “10 Republicans and 3 Democrats.” *Harper I*, slip op. at 13. And it found persuasive that “the redistricting committee, and ultimately the General Assembly as a whole, approved the 2016 congressional districts by party-line vote.” *Id.*

Legislative Defendants knew this time that they could not adopt redistricting criteria explicitly stating that “[t]he partisan makeup of the congressional delegation under the enacted plan is 10 Republicans and 3 Democrats,” *id.* (quoting *Rucho*, 318 F. Supp. 3d at 805), and could not openly load partisan data into public terminals. *See also id.* at 13 (Chair of the House Redistricting Committee admitting that he “propose[d] that [the Committee] draw the maps to give a partisan advantage to 10 Republicans and 3 Democrats because [he] d[id] not believe it [would be] possible to draw a map with 11 Republicans and 2 Democrats.”). So they devised a workaround. *See Griffin v. Cty. Sch. Bd. of Prince Edward Cty.*, 377 U.S. 218, 223 (1964). Although political data was not loaded onto the computer terminals at which legislators drew and

submitted maps, Legislative Defendants allowed legislators to sit down at those terminals and simply copy maps drawn by outside political consultants using prohibited political data. *See supra* pp. 6-8.

In addition to rendering the criterion against the use of political data meaningless, Legislative Defendants also enacted new criteria designed to facilitate a partisan gerrymander. While the adopted criteria for the 2016 Plan prevented lawmakers from “divid[ing] a county into more than two districts,” 2016 Adopted Criteria at 2, Legislative Defendants removed this requirement for 2021. *See generally* 2021 Adopted Criteria. Taking advantage of this newfound freedom, Legislative Defendants proceeded to trisect three heavily Democratic counties (Mecklenburg, Wake, and Guilford), profoundly diluting the voting power of these counties’ Democratic residents. Cooper Rep. at 3. No other county is split three times under the 2021 Plan. Chen Rep. at 11. And just like the 2016 Plan enjoined in *Harper I*, the gerrymandered nature of the 2021 Plan is reflected in the fact that it was approved on strict party-line votes.⁷

This redistricting process and the congressional plan that resulted make clear that the 2021 Plan is an extreme partisan gerrymander. Similar to the 2016 Plan that was enjoined in *Harper I*, it is designed to produce 10 to 11 Republican seats no matter how the people vote. This sort of gerrymander “entrench[es] politicians in power” and ensures that congressional elections will not “be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Harper*

⁷ The Senate and House Committees approved the 2021 Plan on November 1 and 3, respectively, with all Republicans on both committees voting in favor and all Democrats voting against. The full Senate and House then passed the 2021 Plan on November 2 and November 3, respectively, again on strict party line votes. *See* Charles Duncan, *Redistricting in NC: New Maps Approved, Favoring GOP*, Spectrum News 1 (Nov. 4, 2021), available at <https://spectrumlocalnews.com/nc/charlotte/politics/2021/11/04/redistricting-in-n-c---new-maps-approved--favoring-gop>.

I, slip op. at 7. And as such Plaintiffs are likely to succeed on their claim that it violates the Free Elections Clause.

B. The 2016 Plan violates North Carolina’s Equal Protection Clause.

The North Carolina Constitution’s Equal Protection Clause declares that “[n]o person shall be denied the equal protection of the laws.” N.C. Const., art. I, § 19. This clause provides greater protection for voting rights than its federal counterpart. *Harper I*, slip op. at 7. Specifically, North Carolina’s Equal Protection Clause protects “the fundamental right of each North Carolinian to *substantially equal voting power*.” *Id.* (citing *Stephenson v. Bartlett*, 355 N.C. 354, 3379, 562 S.E.2d 377, 394 (2002) (emphasis in original)). “It is well settled in this State that ‘the right to vote on equal terms is a fundamental right.’” *Common Cause*, 2019 WL 4569584, at *113 (citing *Stephenson*, 355 N.C. at 378, 562 S.E.2d at 393 (quoting *Northampton Cnty.*, 326 N.C. at 747, 392 S.E.2d at 356)). “These principles apply with full force in the redistricting context.” *Id.* As *Harper I* explained, “partisan gerrymandering runs afoul of the State’s obligation to provide all persons with equal protection of law because, by seeking to diminish the electoral power of supporters of a disfavored party, a partisan gerrymander treats individuals who support candidates of one political party less favorably than individuals who support candidates of another party.” *Harper I*, slip op. at 8. In *Common Cause*, the court held that extreme partisan gerrymandering infringes upon a “fundamental right,” because “the classification of voters based on partisanship in order to pack and crack them into districts is an impermissible distinction among similarly situated citizens aimed at denying equal voting power.” *Common Cause*, 2019 WL 4569584, at *113 (internal quotation marks omitted).

In evaluating whether an alleged partisan gerrymander violates North Carolina’s Equal Protection Clause, this Court applies a three-part test. *Harper I*, slip op. at 8. First, plaintiffs challenging a districting plan must prove that state officials’ predominant purpose in drawing

district lines was to entrench their party in power by diluting the votes of citizens favoring their rival. *Id.* (citing *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm’n*, 135 S. Ct. 2652, 2658 (2015)). Second, plaintiffs must establish that the lines drawn in fact have the intended effect by “substantially” diluting their votes. *Id.* (citing *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 861 (M.D.N.C. 2018)). Finally, if the plaintiffs make those showings, “the State must provide a legitimate, non-partisan justification (*i.e.*, that the impermissible intent did not cause the effect) to preserve its map.” *Id.* (citing *Rucho v. Common Cause*, 139 S. Ct. 2484, 2516 (2019) (Kagan, J., dissenting)). The 2021 Plan fails at every step.

First, as discussed above, the General Assembly intentionally entrenched Republicans in power through the 2021 Plan. To determine whether discriminatory intent is at play, “a court must undertake a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” *Holmes v. Moore*, 270 N.C. App. 7, 16–17, 840 S.E.2d 244, 254–55 (2020) (citing *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 266 (1977)). Discriminatory purpose need not be “the sole or even a primary motive,” but rather just “a motivating factor.” *Id.* (internal quotation marks and citation omitted). And discriminatory purpose can be inferred from the totality of the relevant facts. *Id.* In determining intent in other contexts, North Carolina courts have looked to the *Arlington Heights* factors. *Id.* These include: “[t]he historical background of the [challenged] decision”; “[t]he specific sequence of events leading up to the challenged decision”; “[d]epartures from normal procedural sequence”; the legislative history of the decision; and of course, the disproportionate “impact of the official action.” *Id.* (citing *Arlington Heights*, 429 U.S. at 266-67).

As to the historical background of redistricting in North Carolina, there can be no dispute that the General Assembly has repeatedly and intentionally discriminated against both Black North

Carolínians and Democratic voters in redistricting. *See supra* pp. 3-4. Additionally, the process of enacting the 2021 Plan is replete with evidence demonstrating intentional discrimination. In violation of its own guidelines, and *Harper I*'s clear instruction that legislators should not “seek[] to diminish the electoral power of supporters of a disfavored party,” *Harper I*, slip op. at 8, the Committees' process flagrantly allowed map drawers to consider partisan data and draw a plan that favors Republicans. Legislators intentionally turned a blind eye towards map drawers submitting maps that had been drawn using partisan data, and Defendant Hall openly admitted that he had no desire to prevent legislators from introducing partisan data into maps. Oct. 5, 2021 H. Redistricting Comm. Hr'g Tr. at 52:18-53:13. Moreover, the Committee constructed its guidelines to enable the packing and cracking of voters in all the State's largest and most Democratic counties and went on to do just this, trifurcating Mecklenburg, Wake, and Guilford Counties. *See* 2021 Adopted Criteria (eliminating the criterion from the 2016 Adopted Criteria that “reasonable efforts shall be made not to divide a county into more than two districts”); 2016 Adopted Criteria. And Legislators excluded Democratic communities from public hearings and ignored the limited input they allowed these communities to offer. Cooper Rep. at 8. Finally, like its predecessor, the plan passed through committees and the full General Assembly on strict party-line votes. *Harper I*, slip op. at 13.

Expert evidence also confirms that the 2021 Plan was intended to entrench the Republican party in power. Dr. Pegden's analysis concludes that the 2021 Plan is more favorable to Republicans than 99.98% of plans generated by making small changes to district boundaries. The likelihood of that happening by chance, as opposed to by intent, is infinitesimal. Of the 1,000 maps that Dr. Chen generated, every single one complied more closely with the 2021 Adopted Criteria

compared to the Enacted Plan, and none of the computer-simulated maps conveyed such significant advantages to the Republican Party across a broad range of statistical measures.

Second, the 2021 Plan has had its “intended effect” of diluting the votes of Plaintiffs and other Democratic voters, depriving them of substantially equal voting power and the right to vote on equal terms. As detailed above, Dr. Chen’s and Dr. Cooper’s analyses confirm that Legislative Defendants succeeded in their goal of creating 10-11 Republican seats. *See supra* pp. 23-28. The 2021 Plan achieves this result by “packing and cracking Democratic voters” across the 14 districts, just like the 2016 Plan enjoined in *Harper I* and the 2017 state legislative plans struck down under the Equal Protection Clause in *Common Cause*. *Harper I*, slip op. at 18; *Common Cause*, 2019 WL 4569584, at *116. As under those plans, the margins of victory under the 2021 Plan—and not just the seat counts—confirm the vote dilution. Assuming a statewide vote breakdown in line with recent elections, Democrats under the 2021 Plan would win four districts with an average of 65.4% of the vote, while Republicans would average 57.3% in the remaining 10 districts—a margin of 8.1%, an outcome never generated in Dr. Chen’s 1000 simulated maps. Chen Rep. at 42-43. “This packing and cracking diminishes the ‘voting power’ of Democratic voters” in all 14 districts. *Common Cause*, 2019 WL 4569584, at *116. Thus, Democratic voters in the three packed districts “are substantially less likely to ultimately matter in deciding the election results” when compared to Republican voters in the remaining districts. *Id.*

The 2021 Plan “not only deprive[s] Democratic voters of equal voting power in terms of electoral outcomes, but also deprive[s] them of substantially equal [congressional] representation.” *Id.* at *116. “When a district is created solely to effectuate the interests of one group”—as the process and Dr. Chen’s analyses make clear, *see* Chen Rep. 45,—“the elected official from that district is more likely to believe that their primary obligation is to represent only the members of

that group, rather than their constituency as a whole.” *Common Cause*, 2019 WL 4569584, at *116 (internal quotation marks omitted).

Dr. Chen’s analysis in this case independently confirms that the 2021 Plan deprives Plaintiffs of substantially equal voting power and the right to vote on equal terms. Dr. Chen concluded that five Plaintiffs would be in more Democratic leaning or more competitive districts under a map that was not drawn to maximize Republican advantage and that three Plaintiffs would be in less packed Democratic districts, in plans drawn using traditional nonpartisan criteria. Chen Rep. at 48.

Finally, there is no legitimate, nonpartisan justification for the 2021 Plan’s extreme partisan bias. Legislative Defendants cannot conceivably show that the 2021 Plan is narrowly tailored to achieve a compelling government interest. Indeed, Legislative Defendants designed the 2021 Adopted Criteria to allow them to crack the State’s three Democratic strongholds for partisan gain, and even then, they failed to follow other of their own criteria for partisan ends.

In short, in drawing the 2021 Plan, Legislative Defendants engaged in the “intentional ‘classification of voters’ based on partisanship in order to pack and crack them into districts” and to “deprive [them] of the right to vote on equal terms.” *Common Cause*, 2019 WL 4569584, at *117. Plaintiffs are likely to succeed on their Equal Protection Clause claim.

C. The 2021 Plan violates North Carolina’s Freedom of Speech and Assembly Clauses.

The 2021 Plan burdens protected expression and association by making Democratic votes less effective and by preventing Democratic voters from associating with one other to elect and instruct representatives. Because Legislative Defendants cannot establish that the 2021 Plan was narrowly tailored to achieve a compelling government interest, it fails strict scrutiny.

1. The 2021 Plan unconstitutionally discriminates against protected expression and association.

The North Carolina Constitution’s Freedom of Speech Clause provides that “[f]reedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained.” N.C. Const., art. I, § 14. The Freedom of Assembly Clause provides in relevant part that “[t]he people have a right to assemble together for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.” *Id.* § 12. These clauses provide greater protection for speech and association than their federal counterparts. *Common Cause*, 2019 WL 4569584, at *118-19.

Common Cause held that “[v]oting for the candidate of one’s choice and associating with the political party of one’s choice are core means of political expression protected by” these clauses. *Id.* “Voting provides citizens a direct means of expressing support for a candidate and his views,” and “is no less protected ‘merely because it involved the act’ of casting a ballot.” *Id.* at *119 (quoting *State v. Bishop*, 368 N.C. 869, 874, 787 S.E.2d 814, 818 (2016)). Similarly, “[c]itizens form parties to express their political beliefs and to assist others in casting votes in alignment with those beliefs.” *Id.* at *120 (quoting *Libertarian Party of N.C. v. State*, 365 N.C. 41, 49, 707 S.E.2d 199, 204-05 (2011)). “[B]anding together with likeminded citizens in a political party” thus “is a form of protected association.” *Id.* As the *Harper I* Court recognized, those holdings apply in the context of congressional elections just as they did in the context of state legislative elections in *Common Cause*. See *Harper I*, slip op. at 10-11.

a. A districting plan is subject to strict scrutiny where it burdens protected expression based on viewpoint by discriminatorily making the votes cast for one party’s candidates less effective. “The guarantee of free expression ‘stands against attempts to disfavor certain subjects or viewpoints.’” *Id.* at 9 (quoting *Citizens United v. FEC*, 558 U.S. 310, 340 (2010)). Notably, a

plan “need not explicitly mention any particular viewpoint to be impermissibly discriminatory.” *Common Cause*, 2019 WL 4569584, at *121. And “[v]iewpoint discrimination is *most* insidious where the targeted speech is political.” *Harper I*, slip op. at 9. “When a legislature engages in extreme partisan gerrymandering, it identifies certain preferred speakers (e.g. Republican voters) while targeting certain disfavored speakers (e.g. Democratic voters) because of disagreement with the views they express when they vote.” *Id.* at 10.

The 2021 Plan replicates features that led the *Common Cause* Court to conclude that the 2017 state legislative plans violated the Freedom of Speech Clause. Here too, the Legislative Defendants “singled out [Democratic voters] for disfavored treatment by packing and cracking them into districts with the aim of diluting their votes and, in the case of cracked districts, ensuring that these voters are significantly less likely, in comparison to Republican voters, to be able to elect a candidate who shares their views.” *Common Cause*, 2019 WL 4569584, at *120.

As in *Common Cause*, it “changes nothing” that “Democratic voters can still cast ballots under gerrymandered maps.” *Id.* at 121. “The government unconstitutionally burdens speech where it renders disfavored speech *less effective*, even if it does not ban such speech outright.” *Id.* Like the invalidated 2017 state legislative plans, the 2021 Plan’s “sorting of Plaintiffs and other Democratic voters based on disfavor for their political views has burdened their speech by making their votes less effective.” *Id.* “Plaintiffs and other Democratic voters live in districts where their votes are guaranteed to be less effective—either because the districts are packed such that Democratic candidates will win by astronomical margins or because the Democratic voters are cracked into seats that are safely Republican.” *Id.*

b. The 2021 Plan independently violates Article I, § 12 by burdening the ability of Democratic voters to associate effectively. As *Harper I* explained, “a legislature that engages in

extreme partisan gerrymandering burdens the associational rights of disfavored voters.” *Harper I*, slip op. at 10. The *Common Cause* court held that a districting plan is subject to strict scrutiny where it burdens disfavored association by restricting “the ability of like-minded people across the State to affiliate in a political party and carry out [their] activities and objects.” *Common Cause*, 2019 WL 4569584, at *122 (internal quotation marks omitted); *see also Harper I*, slip op. at 8-11. The *Common Cause* court concluded that under the 2017 state legislative plans, “Democratic voters who live in cracked districts have little to no ability to instruct their representatives or obtain redress from their representatives on issues important to those voters.” *Id.* The same is true under the 2021 Plan. The 2021 Plan places Democrats in ten cracked districts that diminish their voting strength. The Democratic voters in these cracked districts have virtually no chance of successfully banding together to elect a candidate of their choice, and their Republican representatives have little incentive to consider the views of Democratic constituents.

c. The 2021 Plan fails strict scrutiny—and indeed any scrutiny. “Discriminating against citizens based on their political beliefs does not serve any legitimate government interest.” *Common Cause*, 2019 WL 4569584, at *123. “Blatant examples of partisanship driving districting decisions are unrelated to any legitimate legislative objective.” *Id.* at *115 (internal quotation marks omitted). “[P]artisan gerrymanders are incompatible with democratic principles” and are “contrary to the compelling governmental interests established by the North Carolina Constitution ‘in having fair, honest elections,’ where the ‘will of the people’ is ascertained ‘fairly and truthfully.’” *Id.* at *115-16 (quoting *Petersilie*, 334 N.C. at 182, 432 S.E.2d at 840, and *Skinner*, 169 N.C. at 415, 86 S.E.2d at 356)).

2. The 2021 Plan unconstitutionally retaliates against protected expression and association.

The 2021 Plan independently violates the Freedom of Speech and Assembly Clauses by retaliating against voters based on their protected speech and association. “In addition to forbidding discrimination,” North Carolina’s Freedom of Speech and Assembly Clauses “also bar *retaliation* based on protected speech” or conduct. *Id.* at *123. “Courts carefully guard against retaliation by the party in power.” *Harper I*, slip op. at 10. To prevail on a retaliation theory, a plaintiff must show that “(1) the [challenged plan] take[s] adverse action against them, (2) the [plan] w[as] created with an intent to retaliate against their protected speech or conduct, and (3) the [plan] would not have taken the adverse action but for that retaliatory intent.” *Common Cause*, 2019 WL 4569584, at *123.

Like the 2017 state legislative plans invalidated in *Common Cause*, the 2021 Plan satisfies all three of these requirements. As to adverse action, “[i]n *relative* terms, Democratic voters under the [2021 Plan] are far less able to succeed in electing candidates of their choice than they would be under plans that were not so carefully crafted to dilute their votes. And in *absolute* terms, Plaintiffs are significantly foreclosed from succeeding in electing preferred candidates.” *Id.* As to intent, highly probative circumstantial evidence confirms that the 2021 Plan “intentionally targeted Democratic voters based on their voting histories.” *Id.* at *124; *see supra* pp. 33-34. And as to causation, “[t]he adverse effects described above would not have occurred if Legislative Defendants had not cracked and packed Democratic voters and thereby diluted their votes.” *Common Cause*, 2019 WL 4569584, at *124. As he did in *Common Cause*, Dr. Chen “compared the districts in which the Individual Plaintiffs currently reside under the enacted plan[] with districts in which they would have resided under each of his simulated plans,” and found that eight

of the Plaintiffs reside in districts that have a more extreme partisan distribution than was observed in at least 95% of the simulated maps. *Id.*; see Chen Rep. 48.

D. All Plaintiffs have established a likelihood of standing.

All thirteen Plaintiffs have established a likelihood of standing to sue in this case. “[B]ecause North Carolina courts are not constrained by the ‘case or controversy’ requirement of Article III of the United States Constitution, our State’s standing jurisprudence is broader than federal law.” *Davis v. New Zion Baptist Church*, 811 S.E.2d 725, 727 (N.C. Ct. App. 2018) (internal quotation marks omitted); accord *Goldston v. State*, 361 N.C. 26, 35, 637 S.E.2d 876, 882 (2006) (“While federal standing doctrine can be instructive as to general principles ... , the nuts and bolts of North Carolina standing doctrine are not coincident with federal standing doctrine.”). “At a minimum, a plaintiff in a North Carolina court has standing to sue when it would have standing to sue in federal court.” *Common Cause*, 2019 WL 4569584, at *105.

“The North Carolina Supreme Court has broadly interpreted Article I, § 18 to mean that ‘[a]s a general matter, the North Carolina Constitution confers standing on those who suffer harm.’” *Id.* at *106 (quoting *Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640, 642, 669 S.E.2d 279, 281 (2008)). The “gist” of standing under North Carolina law involves “whether the party seeking relief has alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.” *Goldston*, 361 N.C. at 30, 637 S.E.2d at 879 (quotation marks omitted). Although the North Carolina Supreme Court “has declined to set out specific criteria necessary to show standing in every case, the Supreme Court has emphasized two factors in its cases examining standing: (1) the presence of a legally cognizable injury; and (2) a means by which the courts can remedy that injury.” *Davis*, 811 S.E.2d at 727-28. Moreover, to obtain a preliminary injunction, a plaintiff need only show “a likelihood

that plaintiff has standing.” *Action NC v. Strach*, 216 F. Supp. 3d 597, 630 (M.D.N.C. 2016) (internal quotation marks omitted).

The *Harper I* court recognized these Plaintiffs have standing to challenge their gerrymandered congressional districts. *Harper I*, slip op. at 5. Indeed, as to the second factor, previous remedial orders in *Harper I* and in *Common Cause* demonstrate that this Court is fully capable of remedying partisan gerrymandering. And as to the first, Plaintiffs have suffered legally cognizable injuries in the drawing of their individual districts. In *Common Cause*, this Court held that the plaintiffs had standing where they had introduced “district-specific evidence that [they] live in ... districts that are outliers in partisan composition relative to the districts in which they live under Dr. Chen’s nonpartisan simulated plans.” *Common Cause*, 2019 WL 4569584.

Here, Dr. Chen has performed precisely the same district-specific analysis that he performed in *Common Cause*. Dr. Chen created computer simulations for North Carolina’s congressional districts that, like the simulations he created in *Common Cause*, strictly adhere to the nonpartisan traditional redistricting criteria within the 2016 Adopted Criteria. Chen Rep. at 5. Using these simulations, Dr. Chen has identified the extent to which each Plaintiff here lives in a congressional district that is a partisan outlier relative to the district in which he or she would live under neutral maps. *Id.* at 48. Dr. Chen finds that eight of the Plaintiffs reside in districts that have a more extreme partisan distribution than was observed in at least 95% of the simulated maps. *See* Chen Rep. at 48. In *Common Cause*, the court held that a plaintiff with standing to challenge his or her individual district necessarily had standing to challenge his or her entire county grouping “because the manner in which one district is drawn in a county grouping necessarily is tied to the drawing of some, and possibly all, of the other districts within that grouping.” *Common Cause*, 2019 WL 4569584, at *108. But congressional districts in North Carolina are not drawn in county

groupings—the entire statewide map is a single grouping. The drawing of *every* congressional district therefore “is tied to the drawing of some, and possibly all, of the other” districts. *See also Erfer v. Commonwealth*, 794 A.2d 325, 330 (Pa. 2002), *abrogated on other grounds by League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018) (holding that individual voters have standing to challenge entire congressional plan, because a congressional plan “acts as an interlocking jigsaw puzzle, each piece reliant upon its neighbors to establish a picture of the whole”). As Dr. Cooper explains, “[w]hile the district-by-district analysis is key to understanding the ways in which the current map is gerrymandered, the map itself is best thought of as a single organism, rather than 14 separate districts—when one district moves in one direction, another district must move in response.” Cooper Rep. at 2. Therefore, all 13 Plaintiffs have standing to challenge the entire 2021 Plan.

III. Plaintiffs are likely to suffer irreparable harm absent a preliminary injunction.

Absent a preliminary injunction, Plaintiffs are “likely to sustain irreparable loss.” *Triangle Leasing*, 327 N.C. at 227, 393 S.E.2d at 856-57. As the *Harper I* court explained in ruling on Plaintiffs’ request for preliminary relief regarding the 2016 Plan, “[t]he loss to Plaintiffs’ fundamental rights guaranteed by the North Carolina Constitution will undoubtedly be irreparable if congressional elections are allowed to proceed under the 2016 congressional districts.” *Harper I*, slip op. at 14. Thus, “issuance [of preliminary relief] is necessary for the continued protection of Plaintiffs’ fundamental rights guaranteed by the North Carolina Constitution during the course of the litigation.” *Id.*

So too here. If an injunction does not issue, Plaintiffs will be forced to vote in 2022 in unlawful districts that violate multiple fundamental rights guaranteed by the North Carolina Constitution. That alone is irreparable injury. The loss of constitutional rights, “for even minimal periods of time, unquestionably constitutes irreparable injury,” *Elrod v. Burns*, 427 U.S. 347, 373

(1976), and an infringement of “voting and associational rights . . . cannot be alleviated after the election.” *Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 883 (3d Cir. 1997); *see also League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (“Courts routinely deem restrictions on fundamental rights irreparable injury.”).

Indeed, North Carolinians have been forced to vote in districts that a court later held unconstitutional in nearly every congressional election since the 2010 decennial census. Once again, only a nonpartisan remedial plan can ensure that Plaintiffs no longer live in districts that were not the product of illegal discrimination by their government.

IV. There is adequate time to implement a remedy before the 2022 primaries.

There is more than enough time to establish a remedial plan for use in the March 2022 primaries. This is not a matter of speculation—the remedial processes in *Harper I* and in *Common Cause* in 2019 confirms it. After the court in *Harper I* issued a preliminary injunction enjoining use of the 2016 Plan, the General Assembly established new congressional districts just two and a half weeks later. The General Assembly moved even faster in *Common Cause*, passing both the state House and state Senate remedial plans in less than two weeks.

Common Cause, moreover, involved *more than five times* as many districts than are at issue here. That court invalidated a total of 77 districts across 21 different county groupings in two different legislative bodies. This case involves just one statewide map consisting of 14 districts, and does not require application of the complicated Whole County Provision that applies to state legislative districts. The events of 2019 prove the General Assembly can pass remedial maps quickly, and well in advance of the March 2022 primaries.

Deadlines leading up to the March 2022 primaries can be moved as necessary to provide effective relief, which Defendants have previously admitted. *Harper I*, slip op. at 15. The State Board of Elections has authority “to make reasonable interim rules and regulations” to move

administrative deadlines in the event that any North Carolina election law “is held unconstitutional or invalid by a State or federal court.” N.C. Gen. Stat. § 163A-742. And this Court has remedial authority to move deadlines related to the 2022 congressional primary elections, if necessary. Indeed, in 2019, the *Harper I* court enjoined the candidate filing period to adjudicate Plaintiffs’ motion for summary judgment. Order Enjoining Filing Period at 1-2. Like in *Harper I*, this Court can enjoin the candidate filing period for congressional candidates only, or it could enjoin the filing period for candidates for all races. *Id.*

Moreover, if needed, the Court could move the congressional primaries. *See Common Cause*, 2019 WL 4569584, at *135. One possibility would be to move the congressional primaries to the “Second Primary” date on April 26, 2022, that has taken place in every recent election cycle for primary run-offs.

There is precedent for doing so. In 2016, after a federal court enjoined the State’s congressional plan as an unconstitutional racial gerrymander, the General Assembly moved only the congressional primaries, while leaving other primaries on the originally scheduled date. *See* N.C. Sess. Law 2016-2 § 1(b). Such changes are not necessary at this stage, however, as sufficient time remains for the Court to receive briefing and argument, issue a preliminary injunction, and oversee a remedial process well in advance of the March 2022 primaries.

V. The balance of equities strongly favors a preliminary injunction.

Finally, “a careful balancing of the equities,” *A.E.P. Indus.*, 308 N.C. at 400, 302 S.E.2d at 759, weighs decidedly in favor of an injunction. Plaintiffs seek to vindicate interests of the highest importance. Just as with the 2016 Plan, absent an injunction now “the people of [North Carolina] will lose the opportunity to participate in congressional elections conducted freely and honestly.” *Harper I*, slip op. at 15. And “[f]air and honest elections are to prevail in this state.” *Common Cause*, 2019 WL 4569584, at *128 (quoting *McDonald v. Morrow*, 119 N.C. 666, 673, 26 S.E.

132, 134 (1896)). The North Carolina Supreme Court “has elevated this principle to the highest legal standard, noting that it is a ‘compelling interest’ of the State ‘in having fair, honest elections.’” *Id.* (quoting *State v. Petersilie*, 334 N.C. 169, 184, 432 S.E.2d 832, 840 (1993)). Plaintiffs’ claims implicate “fundamental right[s] ... enshrined in our Constitution’s Declaration of Rights, a compelling governmental interest, and a cornerstone of our democratic form of government.” *Id.*, 2019 WL 4569584, at *109.

In contrast, Defendants will suffer no comparable harm. Like in 2019, the primary possible interest Legislative Defendants have in conducting elections under the 2021 Plan (aside from unfair partisan advantage) is a vague and generalized one in “effectuating an act of the General Assembly.” *Harper I*, slip op. at 15. As the Court held before, this, nor any other concerns over disruption, confusion, or uncertainty of the electoral process outweigh the specific and grave harm to Plaintiffs “from the irreparable loss of their fundamental rights guaranteed by the North Carolina Constitution.” *Id.*

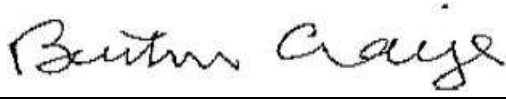
This case is about the rights not just of Plaintiffs, but of *all* North Carolina citizens to vote in lawful districts that will reveal, “fairly and truthfully, the will of the people.” *Id.* Absent a preliminary injunction, Plaintiffs and their fellow citizens will be forced to cast their ballots in invalid, unconstitutional congressional districts in 2022. It would be inequitable in the extreme to force them to do so.⁸

⁸ This Court should not require Plaintiffs to post a bond. North Carolina Rule of Civil Procedure 65(c) provides that “[n]o ... preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the judge deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined.” But it is well settled that there are “some instances when it is proper for no security to be required of a party seeking injunctive relief.” *Staton v. Russell*, 151 N.C. App. 1, 12, 565 S.E.2d 103, 110 (2002) (quotation marks omitted). This is just such an instance. There is no prospect that any party to this case will be “wrongfully enjoined” or incur any recoverable “costs or

CONCLUSION

For the foregoing reasons, the Court should enter a Preliminary Injunction in substantially the form of the attached proposed order.

Dated: November 30, 2021

By: 

PATTERSON HARKAVY LLP

Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Plaintiffs

ELIAS LAW GROUP LLP

Marc E. Elias*
Aria C. Branch*
Lalitha D. Madduri*
Jacob D. Shelly*
Graham W. White*
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
MElias@elias.law
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

Abha Khanna*
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
AKhanna@elias.law

damages” therefrom. And no security is required where, as here, “one purpose of the ... injunction is to preserve the court’s jurisdiction.” 151 N.C. App. at 13, 565 S.E.2d at 110.

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

Elisabeth S. Theodore*
R. Stanton Jones*
Samuel F. Callahan*
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
elisabeth.theodore@arnoldporter.com

Counsel for Plaintiffs

* *Pro hac vice* application forthcoming

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing to counsel for Defendants North Carolina State Board of Elections and its members via *e-mail*, and served a copy of the foregoing to the remaining defendants by *U.S. mail*, addressed to the following persons at the following addresses which are the last addresses known to me:

Warren Daniel
300 N. Salisbury Street
Rm. 627
Raleigh, N.C. 27603

Paul Newton
300 N. Salisbury Street
Rm. 312
Raleigh, N.C. 27603

David R. Lewis
16 West Jones Street
Rm. 2301
Raleigh, N.C. 27601

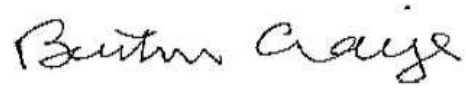
Ralph E. Hise
300 N. Salisbury St.
Rm. 300-A
Raleigh, N.C. 27603

Timothy K. Moore
16 West Jones Street

Rm. 2304
Raleigh, N.C. 27601

Philip E. Berger
16 West Jones Street
Rm. 2007
Raleigh, N.C. 27601

This the 30th day of November, 2021.

A handwritten signature in cursive script that reads "Burton Craige".

Burton Craige, NC Bar No. 9180

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 21 CVS 500085

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

**CORRECTED CERTIFICATE OF SERVICE OF PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

I hereby certify that I have this day served a copy of Plaintiffs' Motion for a Preliminary Injunction *by U.S. mail*, addressed to the following persons at the following addresses which are the last addresses known to me:

Destin Hall
16 West Jones Street
Rm. 2301
Raleigh, NC 27601

Philip E. Berger
16 West Jones St.
Rm. 2007
Raleigh, NC 27601

Warren Daniel
300 N. Salisbury St.
Rm. 6
Raleigh, NC 27603

Ralph E. Hise, Jr.
300 N. Salisbury St.
Rm. 3
Raleigh, NC 27603

Timothy K. Moore
16 West Jones St.
Rm. 2304

Raleigh, NC 27601

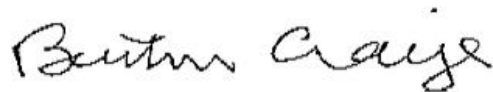
Paul Newton
300 N. Salisbury St.
Rm. 3
Raleigh, NC 27603

Katelyn Love
General Counsel
NC State Board of Elections
430 N. Salisbury St.
Suite 3128
Raleigh, NC 27603

A copy of Plaintiffs' Motion for a Preliminary Injunction was also sent by *U.S. Mail* to the Attorney General as agent for defendants Philip E. Berger, Timothy K. Moore, Paul Newton, Ralph Hise, Destin Hall, and Warren Daniel, addressed as follows:

Josh Stein
Attorney General
114 West Edenton Street
Raleigh, NC 27603

This the 30th day of November, 2021.

A handwritten signature in black ink that reads "Burton Craige". The signature is written in a cursive, slightly slanted style.

Burton Craige, NC Bar No. 9180

Electronically Filed
2021-11-30 13:44:54

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 21 CVS 500085

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

**DECLARATION OF
LALITHA D. MADDURI**

I, Lalith D. Madduri, declare and say as follows:

1. I am over the age of eighteen (18) and competent to testify as to the matters set forth herein.

2. I am a counsel with the law firm Elias Law Group LLP and one of the attorneys representing Plaintiffs in this case.

3. I submit this declaration in support of Plaintiffs' Motion for a Preliminary Injunction.

4. Attached as Exhibit A is a true and correct copy of the order granting plaintiffs' motion for a preliminary injunction in *Harper v. Lewis*, No. 19-CVS-012667 (N.C. Super Ct. Oct. 28, 2019).

5. Attached as Exhibit B is a true and correct copy of the order enjoining the filing period for congressional elections in *Harper v. Lewis*, No. 19-CVS-012667 (N.C. Super. Ct. Nov. 20, 2019).

6. Attached as Exhibit C is a true and correct copy of the transcript of the hearing on plaintiffs’ motion for summary judgment in *Harper v. Lewis*, No. 19-CVS-012667 (N.C. Super. Ct. Nov. 20, 2019).

7. Attached as Exhibit D is a true and correct copy of the Redistricting Criteria for the 2021 Congressional Plan adopted by the North Carolina House Committee on Redistricting and Senate Committee on Redistricting and Elections on August 12, 2021.

8. Attached as Exhibit E is a true and correct copy of the Redistricting Criteria for the 2016 Congressional Plan adopted by the North Carolina General Assembly Joint Committee on Redistricting on February 16, 2016.

9. Attached as Exhibit F is a true and correct copy of the transcript of the October 5, 2021 hearing before the North Carolina House of Representatives Committee on Redistricting.

10. Attached as Exhibit G is a true and correct copy of the expert report of Christopher Cooper.

11. Attached as Exhibit H is a true and correct copy of the expert report of Jowei Chen.

12. Attached as Exhibit I is a true and correct copy of the expert report of Wesley Pegden.

13. Attached as Exhibit J is a true and correct copy of the affidavit of Plaintiff John Anthony Balla.

14. Attached as Exhibit K is a true and correct copy of the affidavit of Plaintiff Kathleen Barnes.

15. Attached as Exhibit L is a true and correct copy of the affidavit of Plaintiff Virginia Walters Brien.

16. Attached as Exhibit M is a true and correct copy of the affidavit of Plaintiff David Dwight Brown.

17. Attached as Exhibit N is a true and correct copy of the affidavit of Plaintiff Gettys Cohen Jr.

18. Attached as Exhibit O is a true and correct copy of the affidavit of Plaintiff Richard R. Crews.

19. Attached as Exhibit P is a true and correct copy of the affidavit of Plaintiff Rebecca Harper.

20. Attached as Exhibit Q is a true and correct copy of the affidavit of Plaintiff Amy Clare Oseroff.

21. Attached as Exhibit R is a true and correct copy of the affidavit of Plaintiff Mark S. Peters.

22. Attached as Exhibit S is a true and correct copy of the affidavit of Plaintiff Lily Nicole Quick.

23. Attached as Exhibit T is a true and correct copy of the affidavit of Plaintiff Donald Rumph.

24. Attached as Exhibit U is a true and correct copy of the affidavit of Plaintiff Shawn Rush.

Respectfully submitted this 30 day of November, 2021

/s/ 
Lalitha D. Madduri

Electronically Filed
2021-11-30 13:44:54

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 012667

REBECCA HARPER, *et al.*
Plaintiffs,

v.

Representative DAVID R. LEWIS,
in his official capacity as Senior
Chairman of the House Standing
Committee on Redistricting, *et al.*,
Defendants.

ORDER ON INJUNCTIVE RELIEF

THIS MATTER came on for hearing on October 24, 2019, before the undersigned three-judge panel upon Plaintiffs’ Motion for Preliminary Injunction, filed September 30, 2019. All adverse parties to this action received the notice required by Rule 65 of the North Carolina Rules of Civil Procedure.

Procedural History

On February 19, 2016, the current North Carolina congressional districts (hereinafter “2016 congressional districts”) were established by an act of the General Assembly, N.C. Sess. Laws 2016-1 (hereinafter “S.L. 2016-1”), as a result of litigation in federal court over the congressional districts originally drawn in 2011. On September 27, 2019, Plaintiffs filed a verified complaint in Superior Court, Wake County, seeking a declaration that the 2016 congressional districts violate the rights of Plaintiffs and all Democratic voters in North Carolina under the North Carolina Constitution’s Free Elections Clause, Art. I, § 10; Equal Protection Clause, Art. I, § 19; and Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14. Plaintiffs seek to enjoin the future use of the 2016 congressional districts. On September 30, 2019, this action was assigned to the undersigned panel by the Chief Justice of the Supreme Court of North Carolina.

On September 30, 2019, Plaintiffs filed a motion for a preliminary injunction seeking to bar Defendants from administering, preparing for, or moving forward with the 2020 primary and general elections in North Carolina for the United States House of Representatives using the 2016 congressional districts. Plaintiffs also filed a motion for expedited briefing and resolution of Plaintiffs' motion for a preliminary injunction. On October 2, 2019, Defendants North Carolina State Board of Elections and its members (collectively hereinafter "State Defendants") notified the Court that, among other things, candidate filing for congressional primaries is set to begin on December 2, 2019. On October 9, 2019, a motion to intervene was filed by three incumbent Congressional Representatives seeking to intervene in this action in both their capacity as Representatives and as residents and voters in three of the congressional districts challenged in Plaintiffs' verified complaint.

On October 10, 2019, the Court granted in part Plaintiffs' motion for expedited briefing, establishing a briefing schedule on Plaintiff's motion for preliminary injunction and setting for hearing Plaintiffs' motion for preliminary injunction and the motion to intervene.

On October 14, 2019, Defendants Representative David R. Lewis, Senator Ralph E. Hise, Jr., Speaker Timothy K. Moore, President Pro Tempore Philip E. Berger, Senator Warren Daniel, and Senator Paul Newton (hereinafter "Legislative Defendants") removed this case to the United States District Court for the Eastern District of North Carolina. On October 21, 2019, State Defendants and Legislative Defendants each filed in federal court a brief in response to Plaintiffs' motion for preliminary injunction in accordance with the Court's October 10, 2019 order. Plaintiffs notified and provided to the Court the

Defendants’ briefs on October 22, 2019, and, on the same date, the federal court remanded this case to state court.

On October 22, 2019, the Congressional Representatives seeking to intervene in this case submitted a brief in response to Plaintiffs’ motion for preliminary injunction. On October 23, 2019, Plaintiffs filed a motion to strike the Congressional Representatives’ response brief, the Congressional Representatives submitted a response brief to Plaintiffs’ motion, and Plaintiffs submitted a brief in reply to that response brief. Additionally, on October 23, 2019, Plaintiffs submitted a brief in reply to Legislative Defendants’ brief in response to Plaintiffs’ motion for preliminary injunction.

These matters came on to be heard on October 24, 2019, during which time the Court granted the Congressional Representatives (hereinafter “Intervenor-Defendants”) permissive intervention and notified the parties that Intervenor-Defendants’ response brief would be considered by the Court in its discretion. Plaintiffs’ motion for preliminary injunction was taken under advisement.

The Court, having considered the pleadings, motions, briefs and arguments of the parties, supplemental materials submitted by the parties, pertinent case law, and the record proper and court file, hereby finds and concludes, for the purposes of this Order, as follows.

Political Question Doctrine

Legislative Defendants contend Plaintiffs’ claims—challenges to the validity of an act of the General Assembly that apportions or redistricts the congressional districts of this State—present non-justiciable political questions. Such claims are within the statutorily-provided jurisdiction of this three-judge panel, N.C.G.S. § 1-267.1, and the Court concludes that partisan gerrymandering claims specifically present justiciable issues, as

distinguished from non-justiciable political questions. Such claims fall within the broad, default category of constitutional cases our courts are empowered and obliged to decide on the merits, and not within the narrow category of exceptional cases covered by the political question doctrine. Indeed, as the Supreme Court of the United States recently explained, partisan gerrymandering claims are not “condemn[ed] . . . to echo in the void,” because although the federal courthouse doors may be closed, “state constitutions can provide standards and guidance for state courts to apply.” *Rucho v. Common Cause*, 139 S. Ct. 2484, 2507 (2019).¹

Standing of Plaintiffs

Legislative Defendants and Intervenor-Defendants contend that Plaintiffs lack standing to pursue their claims in this action. The North Carolina Constitution, however, provides: “All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.” N.C. Const. art. I, § 18. “[B]ecause North Carolina courts are not constrained by the ‘case or controversy’ requirement of Article III of the United States Constitution, our State’s standing jurisprudence is broader than federal law.” *Davis v. New Zion Baptist Church*, 811 S.E.2d 725, 727 (N.C. Ct. App. 2018) (quotation marks omitted); accord *Goldston v. State*, 361 N.C. 26, 35, 637 S.E.2d 876, 882 (2006) (“While federal standing doctrine can be instructive as to general principles . . . and for comparative analysis, the nuts and bolts of North Carolina standing doctrine are not coincident with federal standing doctrine.”).

¹ Likewise, Legislative Defendants’ and Intervenor-Defendants’ contentions that federal law—*i.e.*, the Elections clause and Supremacy clause of the United States Constitution—serves as a bar in state court to Plaintiffs’ action seeking to enjoin the 2016 congressional districts on state constitutional grounds is equally unavailing. Our state courts have jurisdiction to hear and decide claims that acts of the General Assembly apportioning or redistricting the congressional districts of this State run afoul of the North Carolina Constitution.

The North Carolina Supreme Court has broadly interpreted Article I, § 18 to mean that “[a]s a general matter, the North Carolina Constitution confers standing on those who suffer harm.” *Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640, 642, 669 S.E.2d 279, 281 (2008). The “gist of the question of standing” under North Carolina law is whether the party seeking relief has “alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.” *Goldston*, 361 N.C. at 30, 637 S.E.2d at 879 (quoting *Stanley v. Dep’t of Conservation & Dev.*, 284 N.C. 15, 28, 199 S.E.2d 641, 650 (1973)). Although the North Carolina Supreme Court “has declined to set out specific criteria necessary to show standing in every case, [it] has emphasized two factors in its cases examining standing: (1) the presence of a legally cognizable injury; and (2) a means by which the courts can remedy that injury.” *Davis*, 811 S.E.2d at 727-28.

Plaintiffs in this case have standing to challenge the congressional districts at issue because Plaintiffs have shown a likelihood of “a personal stake in the outcome of the controversy,” *Goldston*, 361 N.C. at 30, 637 S.E.2d at 879, and a likelihood that the 2016 congressional districts cause them to “suffer harm,” *Mangum*, 362 N.C. at 642, 669 S.E.2d at 281.

Applicable Legal Standards

At its most basic level, partisan gerrymandering is defined as: “the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power.” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 135 S. Ct. 2652, 2658 (U.S. 2016). Partisan gerrymandering operates through vote dilution—the devaluation of one citizen’s vote as compared to others. A mapmaker draws district lines to

“pack” and “crack” voters likely to support the disfavored party. *See generally Gill v. Whitford*, 138 S. Ct. 1916 (2018).

Plaintiffs claim the 2016 congressional districts are partisan gerrymanders that violate the rights of Plaintiffs and all Democratic voters in North Carolina under the North Carolina Constitution’s Free Elections Clause, Art. I, § 10; Equal Protection Clause, Art. I, § 19; and Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14. Extreme partisan gerrymandering violates each of these provisions of the North Carolina Constitution. *See Common Cause v. Lewis*, 18-CVS-014001, slip. op. at 298-331 (N.C. Sup. Ct. Sept. 3, 2019).

Free Elections Clause

The North Carolina Constitution, in the Declaration of Rights, Article I, § 10, declares that “[a]ll elections shall be free.” Our Supreme Court has long recognized the fundamental role of the will of the people in our democratic government: “Our government is founded on the will of the people. Their will is expressed by the ballot.” *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 220 (1875). In particular, our Supreme Court has directed that in construing provisions of the Constitution, “we should keep in mind that this is a government of the people, in which the will of the people--the majority--legally expressed, must govern.” *State ex rel. Quinn v. Lattimore*, 120 N.C. 426, 428, 26 S.E. 638, 638 (1897) (citing N.C. Const. art. I, § 2). Therefore, our Supreme Court continued, because elections should express the will of the people, it follows that “all acts providing for elections, should be liberally construed, that tend to promote a fair election or expression of this popular will.” *Id.* “[F]air and honest elections are to prevail in this state.” *McDonald v. Morrow*, 119 N.C. 666, 673, 26 S.E. 132, 134 (1896). Moreover, in giving meaning to the Free Elections Clause, this Court’s construction of the words contained therein must

therefore be broad to comport with the following Supreme Court mandate: “We think the object of all elections is to ascertain, fairly and truthfully, the will of the people--the qualified voters.” *Hill v. Skinner*, 169 N.C. 405, 415, 86 S.E. 351, 356 (1915) (quoting *R. R. v. Comrs.*, 116 N.C. 563, 568, 21 S.E. 205, 207 (1895)).

As such, the meaning of the Free Elections Clause is that elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. In contrast, extreme partisan gerrymandering—namely redistricting plans that entrench politicians in power, that evince a fundamental distrust of voters by serving the self-interest of political parties over the public good, and that dilute and devalue votes of some citizens compared to others—is contrary to the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. *See Common Cause*, 18-CVS-014001, slip. op. at 298-307.

Equal Protection Clause

The Equal Protection Clause of the North Carolina Constitution guarantees to all North Carolinians that “[n]o person shall be denied the equal protection of the laws.” N.C. Const., art. I, § 19. Our Supreme Court has held that North Carolina’s Equal Protection Clause protects “the fundamental right of each North Carolinian to *substantially equal voting power*.” *Stephenson v. Bartlett*, 355 N.C. 354, 379, 562 S.E.2d 377, 394 (2002) (emphasis added). “It is well settled in this State that ‘the right to vote *on equal terms* is a fundamental right.’” *Id.* at 378, 562 S.E.2d at 393 (quoting *Northampton Cnty. Drainage Dist. No. One v. Bailey*, 326 N.C. 742, 747, 392 S.E.2d 352, 356 (1990) (emphasis added)).

Although the North Carolina Constitution provides greater protection for voting rights than the federal Equal Protection Clause, our courts use the same test as federal courts in evaluating the constitutionality of challenged classifications under an equal

protection analysis. *Duggins v. N.C. State Bd. of Certified Pub. Accountant Exam'rs*, 294 N.C. 120, 131, 240 S.E.2d 406, 413 (1978); *Richardson v. N.C. Dep't of Corr.*, 345 N.C. 128, 134, 478 S.E.2d 501, 505 (1996). Generally, this test has three parts: (1) intent, (2) effects, and (3) causation. First, the plaintiffs challenging a districting plan must prove that state officials' "predominant purpose" in drawing district lines was to "entrench [their party] in power" by diluting the votes of citizens favoring their rival. *Ariz. State Legis.*, 135 S. Ct. at 2658. Second, the plaintiffs must establish that the lines drawn in fact have the intended effect by "substantially" diluting their votes. *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 861 (M.D.N.C. 2018). Finally, if the plaintiffs make those showings, the State must provide a legitimate, non-partisan justification (*i.e.*, that the impermissible intent did not cause the effect) to preserve its map. *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting).

Generally, partisan gerrymandering runs afoul of the State's obligation to provide all persons with equal protection of law because, by seeking to diminish the electoral power of supporters of a disfavored party, a partisan gerrymander treats individuals who support candidates of one political party less favorably than individuals who support candidates of another party. *Cf. Lehr v. Robertson*, 463 U.S. 248, 265, 103 S. Ct. 2985 (1983) ("The concept of equal justice under law requires the State to govern impartially.")

As such, extreme partisan gerrymandering runs afoul of the North Carolina Constitution's guarantee that no person shall be denied the equal protection of the laws. *See Common Cause*, 18-CVS-014001, slip. op. at 307-17.

Freedom of Speech and Freedom of Assembly Clauses

The Freedom of Speech Clause in Article I, § 14 of the North Carolina Constitution provides that "[f]reedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained." The Freedom of Assembly Clause in Article I, § 12

provides, in relevant part, that “[t]he people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.”

“There is no right more basic in our democracy than the right to participate in electing our political leaders”—including, of course, the right to “vote.” *McCutcheon v. FEC*, 572 U.S. 185, 191, 134 S. Ct. 1434, 1440 (2014) (plurality op.). “[P]olitical belief and association constitute the core of those activities protected by the First Amendment.” *Elrod v. Burns*, 427 U.S. 347, 356, 96 S. Ct. 2673, 2681 (1976). In North Carolina, the right to assembly encompasses the right of association. *Feltman v. City of Wilson*, 238 N.C. App. 246, 253, 767 S.E.2d 615, 620 (2014). Moreover, “citizens form parties to express their political beliefs and to assist others in casting votes in alignment with those beliefs.” *Libertarian Party of N.C. v. State*, 365 N.C. 41, 49, 707 S.E.2d 199, 204-05 (2011). And “for elections to express the popular will, the right to assemble and consult for the common good must be guaranteed.” John V. Orth, *The North Carolina State Constitution* 48 (1995).

It is “axiomatic” that the government may not infringe on protected activity based on the individual’s viewpoint. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828, 115 S. Ct. 2510, 2516 (1995). The guarantee of free expression “stands against attempts to disfavor certain subjects or viewpoints.” *Citizens United v. FEC*, 558 U.S. 310, 340, 130 S. Ct. 876, 898 (2010). Viewpoint discrimination is *most* insidious where the targeted speech is political; “in the context of political speech, . . . [b]oth history and logic” demonstrate the perils of permitting the government to “identif[y] certain preferred speakers” while burdening the speech of “disfavored speakers.” *Id.* at 340-41, 130 S. Ct. at 899.

The government may not burden the “speech of some elements of our society in order to enhance the relative voice of others” in electing officials. *McCutcheon*, 572 U.S. at 207, 134 S. Ct. at 1450; *see also Winborne v. Easley*, 136 N.C. App. 191, 198, 523 S.E.2d 149, 154 (1999) (“political speech” has “such a high status” that free speech protections have their “fullest and most urgent application” in this context (quotations marks omitted)). The government also may not retaliate based on protected speech and expression. *See McLaughlin*, 240 N.C. App. at 172, 771 S.E.2d at 579-80. Courts carefully guard against retaliation by the party in power. *See Elrod*, 427 U.S. at 356, 96 S. Ct. at 2681; *Branti v. Finkel*, 445 U.S. 507, 100 S. Ct. 1287 (1980); *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 110 S. Ct. 2729 (1990). When patronage or retaliation restrains citizens’ freedoms of belief and association, it is “at war with the deeper traditions of democracy embodied in the First Amendment.” *Elrod*, 427 U.S. at 357, 96 S. Ct. at 2682 (quotation marks omitted).

When a legislature engages in extreme partisan gerrymandering, it identifies certain preferred speakers (e.g. Republican voters) while targeting certain disfavored speakers (e.g. Democratic voters) because of disagreement with the views they express when they vote. Then, disfavored speakers are packed and cracked into legislative districts with the aim of diluting their votes and, in cracked districts, ensuring that these voters are significantly less likely, in comparison to favored voters, to be able to elect a candidate who shares their views. Moreover, a legislature that engages in extreme partisan gerrymandering burdens the associational rights of disfavored voters to “instruct their representatives, and to apply to the General Assembly for redress of grievances.” N.C. Const. art. I, § 12. As such, extreme partisan gerrymandering runs afoul of these important guarantees in the North Carolina Constitution of the freedom of speech and the right of the people of our State to assemble together to consult for their common good, to instruct their

representatives, and to apply to the General Assembly for redress of grievances. See *Common Cause*, 18-CVS-014001, slip. op. at 317-31.

Injunctive Relief

“It is well settled in this State that the courts have the power, and it is their duty in proper cases, to declare an act of the General Assembly unconstitutional—but it must be plainly and clearly the case. If there is any reasonable doubt, it will be resolved in favor of the lawful exercise of their powers by the representatives of the people.” *City of Asheville v. State*, 369 N.C. 80, 87-88, 794 S.E.2d 759, 766 (2016) (quoting *Glenn v. Bd. of Educ.*, 210 N.C. 525, 529-30, 187 S.E. 781, 784 (1936)); *State ex rel. Martin v. Preston*, 325 N.C. 438, 449, 385 S.E.2d 473, 478 (1989).

“The purpose of a preliminary injunction is ordinarily to preserve the *status quo* pending trial on the merits. Its issuance is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities.” *State ex rel. Edmisten v. Fayetteville Street Christian School*, 299 N.C. 351, 357, 261 S.E.2d 908, 913 (1980). A preliminary injunction is an “extraordinary remedy” and will issue “only (1) if a plaintiff is able to show *likelihood* of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff’s rights during the course of litigation.” *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759-60 (1983) (emphasis in original); see also N.C.G.S. § 1A-1, Rule 65(b). When assessing the preliminary injunction factors, the trial judge “should engage in a balancing process, weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted. In effect, the harm alleged by the plaintiff must satisfy a

standard of relative substantiality as well as irreparability.” *Williams v. Greene*, 36 N.C. App. 80, 86, 243 S.E.2d 156, 160 (1978).

Status Quo

The 2011 congressional districts, enacted by the General Assembly on July 28, 2011, were struck down as unconstitutional racial gerrymanders and ordered to be redrawn on February 5, 2016. *See Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016). As a result, the 2016 congressional districts were then enacted by the General Assembly on February 19, 2016. N.C. Sess. Laws 2016-1. Plaintiffs’ challenge to the 2016 congressional districts is a challenge to S.L. 2016-1 as enacted; hence, the status quo which Plaintiffs desire to preserve is the existing state of affairs prior to the enactment of S.L. 2016-1. Therefore, the existing state of affairs—*i.e.*, the status quo—prior to the enactment of S.L. 2016-1 was the period in which no lawful congressional district map for North Carolina existed absent the enactment of a remedial map by the General Assembly.

Plaintiffs are Likely to Succeed on the Merits

Quite notably in this case, the 2016 congressional districts have already been the subject of years-long litigation in federal court arising from challenges to the districts on partisan gerrymandering grounds. *See Rucho*, 318 F. Supp. 3d 777. As such, there is a detailed record of both the partisan intent and the intended partisan effects of the 2016 congressional districts drawn with the aid of Dr. Thomas Hofeller and enacted by the General Assembly. *See Rucho*, 318 F. Supp. 3d at 803-10 (detailing the history of the drawing and enactment of the 2016 congressional districts); *see also* Declaration of Elisabeth S. Theodore (attaching as exhibits a number of documents from the record in federal court); *Rucho*, 139 S. Ct. at 2491-93.

For instance, Dr. Hofeller was directed by legislators “to use political data — precinct-level election results from all statewide elections, excluding presidential elections, dating back to January 1, 2008 — in drawing the remedial plan,” and was further instructed to “use that political data to draw a map that would maintain the existing partisan makeup of the state’s congressional delegation, which, as elected under the racially gerrymandered plan, included 10 Republicans and 3 Democrats.” *Rucho*, 318 F. Supp. 3d at 805 (internal citations omitted).

As another example, the redistricting committee approved several criteria for the map-drawing process, including the use of past election data (*i.e.*, “Political Data”) and another labeled “Partisan Advantage,” which was defined as: “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.” *Id.* at 807. In explaining these two criteria, Representative David Lewis “‘acknowledged freely that this would be a political gerrymander,’ which he maintained was ‘not against the law,’” *id.* at 808 (citation omitted), while also going on to state that he “propose[d] that [the Committee] draw the maps to give a partisan advantage to 10 Republicans and 3 Democrats because [he] d[id] not believe it[would be] possible to draw a map with 11 Republicans and 2 Democrats,” *id.* (alterations in original).

Moreover, when drawing the 2016 congressional districts, Dr. Hofeller used “an aggregate variable he created to predict partisan performance” all while “constantly aware of the partisan characteristics of each county, precinct, and VTD.” *Id.* at 805-06.

Finally, the redistricting committee, and ultimately the General Assembly as a whole, approved the 2016 congressional districts by party-line vote. *Id.* at 809.

In light of the above, this Court agrees with Plaintiffs and finds there is a substantial likelihood that Plaintiffs will prevail on the merits of this action by showing beyond a reasonable doubt that the 2016 congressional districts are extreme partisan gerrymanders in violation of the North Carolina Constitution’s Free Elections Clause, Art. I, § 10; Equal Protection Clause, Art. I, § 19; and Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14.

Plaintiffs Will Suffer Irreparable Loss Unless the Injunction is Issued

The loss to Plaintiffs’ fundamental rights guaranteed by the North Carolina Constitution will undoubtedly be irreparable if congressional elections are allowed to proceed under the 2016 congressional districts. As discussed above, Plaintiffs’ have shown a likelihood of succeeding on the merits of their claims that these districts violate multiple fundamental rights guaranteed by the North Carolina Constitution. And as Defendants have emphasized, the 2020 primary elections for these congressional districts—the final congressional elections of this decade before the 2020 census and subsequent decennial redistricting—are set to be held in March of 2020 with the filing period beginning December 2, 2019.

As such, this Court finds that Plaintiffs are likely to sustain irreparable loss to their fundamental rights guaranteed by the North Carolina Constitution unless the injunction is issued, and likewise, issuance is necessary for the continued protection of Plaintiffs’ fundamental rights guaranteed by the North Carolina Constitution during the course of the litigation.

A Balancing of the Equities Weighs in Favor of Plaintiffs

On one hand, Legislative Defendants contend a general harm to them will result from issuing the injunction because the General Assembly will be prevented from

effectuating an act of the General Assembly. On the other hand, Plaintiffs' and all North Carolinians' fundamental rights guaranteed by the North Carolina Constitution will be irreparably lost, as discussed above, if the injunction is not granted. Simply put, the people of our State will lose the opportunity to participate in congressional elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. The Court finds that this specific harm to Plaintiffs absent issuance of the injunction outweighs the potential harm to Legislative Defendants if the injunction is granted.

Legislative Defendants and Intervenor Defendants also contend the issuance of the injunction will result in disruption, confusion, and uncertainty in the electoral process for them, candidates, election officials, and the voting public. But, again, such a proffered harm does not outweigh the specific harm to Plaintiffs from the irreparable loss of their fundamental rights guaranteed by the North Carolina Constitution. Moreover, while State Defendants would prefer not to move elections or otherwise change the current schedule for the 2020 congressional primary election, they recognize that proceeding under the 2016 congressional districts “would require the Board to administer an election that violates the constitutional rights of North Carolina voters” and acknowledge that the election schedule can be changed if necessary. State Defs. Response Brief at 2. In that vein, State Defendants agree with Plaintiffs that “it would be appropriate for this Court to issue an injunction that relieves the Board of any duty to administer elections using an unconstitutionally gerrymandered congressional redistricting plan.” *Id.*

Finally, Legislative Defendants and Intervenor-Defendants contend Plaintiffs simply waited too long to bring their challenge to the 2016 congressional districts in state court. Plaintiffs, however, filed this action in state court only a matter of months after litigation reached its conclusion in federal court, at a time still prior to the candidate filing

period. While the timing of Plaintiffs' action does weigh against Plaintiffs, the Court does not find that the timing of Plaintiffs' filing of this action should bar them from seeking equitable relief in the form of the requested preliminary injunction.

Consequently, after weighing the potential harm to Plaintiffs if the injunction is not issued against the potential harm to Defendants if injunctive relief is granted, this Court concludes the balance of the equities weighs in Plaintiffs' favor. Indeed, the harm alleged by Plaintiffs is both substantial and irreparable should congressional elections in North Carolina proceed under the 2016 congressional districts.

Conclusion

Under these circumstances, the Court, in its discretion and after a careful balancing of the equities, concludes that the requested injunctive relief shall issue in regard to the 2016 congressional districts. The Court further concludes that security is required of Plaintiffs pursuant to Rule 65(c) of the North Carolina Rules of Civil Procedure to secure the payment of costs and damages in the event it is later determined this relief has been improvidently granted.

This Court recognizes the significance and the urgency of the issues presented by this litigation, particularly when considering the impending 2020 congressional primary elections and all accompanying deadlines, details, and logistics. This Court also is mindful of its responsibility not to disturb an act of the General Assembly unless it plainly and clearly, without any reasonable doubt, runs counter to a constitutional limitation or prohibition. For these reasons, the Court will, upon the forthcoming filing of Plaintiffs' motion for summary judgment, provide for an expedited schedule so that Plaintiffs' dispositive motion may be heard prior to the close of the filing period for the 2020 primary election.

This Court observes that the consequences, as argued by Legislative Defendants and Intervenor-Defendants, resulting from a delay in the congressional primary—*e.g.*, decreased voter turnout, additional costs and labor for the State Board of Elections—would be both serious and probable should the primary schedule be adjusted as a result of this Order and Plaintiffs’ ultimate success on the merits of this action. But as discussed above, should Plaintiffs prevail through motion or trial, these consequences pale in comparison to voters of our State proceeding to the polls to vote, yet again, in congressional elections administered pursuant to maps drawn in violation of the North Carolina Constitution.

This Court, however, notes that these disruptions to the election process need not occur, nor may an expedited schedule for summary judgment or trial even be needed, should the General Assembly, on its own initiative, act immediately and with all due haste to enact new congressional districts. This Court does not presume, at this early stage of this litigation, to have any authority to compel the General Assembly to commence a process of enacting new Congressional districts, and this Court recognizes that such a decision is wholly within the discretion of a co-equal branch of government. The General Assembly, however, has recently shown it has the capacity to enact new legislative districts in a short amount of time in a transparent and bipartisan manner, and that the resulting legislative districts, having been approved by this Court, are districts that are more likely to achieve the constitutional objective of allowing for elections to be conducted more freely and honestly to ascertain, fairly and truthfully, the will of the people. *See Common Cause v. Lewis*, 18-CVS-014001 (N.C. Sup. Ct., October 28, 2019). The Court respectfully urges the General Assembly to adopt an expeditious process, as it did in response to this Court’s mandate in the September 3, 2019, Judgment in *Common Cause v. Lewis*, that ensures full transparency and allows for bipartisan participation and consensus to create new

congressional districts that likewise seek to achieve this fundamental constitutional objective.

Accordingly, the Court, in its discretion and for good cause shown, hereby ORDERS that Plaintiffs' motion for preliminary injunction is GRANTED as follows:

1. Legislative Defendants and State Defendants, their officers, agents, servants, employees and attorneys and any person in active concert or participation with them are hereby enjoined from preparing for or administering the 2020 primary and general elections for congressional districts under the 2016 congressional districts established by S.L. 2016-1.
2. Security in an amount of \$1,000 shall be required of Plaintiffs pursuant to Rule 65.
3. The Court retains jurisdiction to move the primary date for the congressional elections, or all of the State's 2020 primaries, including for offices other than Congressional Representatives, should doing so become necessary to provide effective relief in this case.

SO ORDERED, this the 28th day of October, 2019.

/s/ Paul C. Ridgeway

Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite

Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton

Alma L. Hinton, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the parties by emailing a copy thereof to the address below, in accordance with the October 10, 2019 Case Management Order:

Burton Craige
Narenda K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs

R. Stanton Jones*
Elisabeth S. Theodore*
Daniel F. Jacobson*
William Perdue*
Sara Murphy D'Amico*
Graham White*
ARNOLD & PORTER KAYE SCHOLER LLP
Stanton.jones@arnoldporter.com
Elisabeth.theodore@arnoldporter.com
Daniel.jacobson@arnoldporter.com
William.Perdue@arnoldporter.com
Sara.DAmico@arnoldporter.com
Graham.White@arnoldporter.com
Counsel for Plaintiffs

Phillip J. Strach
Thomas A. Farr
Michael McKnight
Alyssa Riggins
OGLETREE DEAKINS NASH SMOAK & STEWART PC
Phil.strach@ogletree.com
Thomas.farr@ogletree.com
Michael.mcknight@ogletree.com
Alyssa.riggins@ogletree.com
Counsel for Legislative Defendants

*Admitted Pro Hac Vice

Amar Majmundar

Stephanie A. Brennan

Paul M. Cox

NORTH CAROLINA DEPARTMENT OF JUSTICE

amajmundar@ncdoj.gov

sbrennan@ncdoj.gov

pcox@ncdoj.gov

Counsel for the State Board of Elections and members of the State Board of Elections

Kieran J. Shanahan

John E. Branch, III

Nathaniel J. Pencook

Andrew D. Brown

SHANAHAN LAW GROUP PLLC

kieran@shanahanlawgroup.com

jbranch@shanahanlawgroup.com

npencook@shanahanlawgroup.com

abrown@shanahanlawgroup.com

Counsel for Intervenor-Defendants

This the 28th day of October, 2019.



Kellie Z. Myers

Trial Court Administrator – 10th Judicial District

kellie.z.myers@nccourts.org

Electronically Filed
2021-11-30 13:44:54

congressional districts. The Court suggested the General Assembly proceed in a manner that ensured full transparency and allowed for bipartisan participation and consensus that would result in congressional districts more likely to achieve the constitutional objective of allowing for those elections to be conducted more freely and honestly to ascertain, fairly and truthfully, the will of the people. On November 15, 2019, new congressional districts were established by an act of the General Assembly. N.C. Sess. Laws 2019-249 (hereinafter S.L. 2019-249). Shortly thereafter on November 15, 2019, Legislative Defendants filed a motion for summary judgment arguing Plaintiffs’ present action—challenging the constitutionality of S.L. 2016-1—is moot, and Plaintiffs filed a response and motion for expedited review of the newly-enacted congressional districts.

Section 163-106.2 of our General Statutes provides that “[c]andidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board no earlier than 12:00 noon on the first Monday in December and no later than 12:00 noon on the third Friday in December preceding the primary: . . . Members of the House of Representatives of the United States.” N.C.G.S. § 163-106.2(a). In the Court’s October 28, 2019, Order, the Court retained jurisdiction to adjust the State’s 2020 congressional primary elections should doing so become necessary to provide effective relief in this case. In light of the recent developments in this litigation, including the enactment of S.L. 2019-249, Legislative Defendants’ motion for summary judgment, and Plaintiffs’ motion for the Court’s review of S.L. 2019-249, and to allow the Court sufficient opportunity to fully consider the significant issues presented by the parties, the Court will enjoin the filing period for the 2020 congressional primary elections in North Carolina until further order of the Court.

Accordingly, the Court, in its discretion and pursuant to its inherent authority,
hereby ORDERS that:

1. On the Court’s own motion, the filing period provided by N.C.G.S. § 163-106.2(a) is hereby enjoined for only the 2020 congressional primary elections, and the North Carolina State Board of Elections shall not accept for filing any notices of candidacy from candidates seeking party primary nominations for the House of Representatives of the United States until further order of the Court.
2. Any party to this action may respond to Plaintiffs’ motion for review of the newly-enacted congressional districts, S.L. 2019-249, by submitting a response brief to the Court by 11:59 p.m. on November 22, 2019, in the manner set forth in the Case Management Order. Plaintiffs shall have until 11:59 p.m. on November 26, 2019, to submit a reply to any response brief in the manner set forth in the Case Management Order.
3. The Court’s November 1, 2019, Order establishing a briefing schedule for summary judgment motions remains in effect.
4. The following will be heard by the Court at 9:00 a.m. on December 2, 2019:
 - a. Plaintiffs’ motion for summary judgment;
 - b. Legislative Defendants’ motion for summary judgment; and,
 - c. Plaintiffs’ motion for review of S.L. 2019-249.

SO ORDERED, this the 20th day of November, 2019.

/s/ Paul C. Ridgeway

Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite

Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton

Alma L. Hinton, Superior Court Judge

Electronically Filed
2021-11-30 13:44:54

EXHIBIT C

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Case No. 19-CVS-12667

REBECCA HARPER, et al.,)
)
Plaintiffs,)
)
vs.)
)
REPRESENTATIVE DAVID R. LEWIS,)
et al.,)
)
Defendants.)

DECISION ON NEW CONGRESSIONAL DISTRICTS

HONORABLE JUDGES PAUL C. RIDGEWAY, JR.,
ALMA L. HINTON AND JOSEPH N. CROSSWHITE

MONDAY, DECEMBER 2, 2019

By: Denise Myers Byrd, CSR 8340, RPR

1 JUDGE RIDGEWAY: All right. Ladies and
2 gentlemen, we've had an opportunity to review these
3 matters and confer among ourselves, and I will read to
4 you the unanimous decision of this Court, which is
5 comprised of Judge Joseph Crosswhite and
6 Judge Alma Hinton and myself, and my colleagues have
7 asked that I read this into the record.

8 Three months ago on September 3rd, 2019, this
9 court announced its judgment in Common Cause versus
10 Lewis, and declared that extreme partisan gerrymandering
11 was unconstitutional under the North Carolina
12 constitution. In the 90 days following that ruling, the
13 voters of North Carolina now have new General Assembly,
14 House, and Senate maps drafted by the General Assembly
15 and approved by the courts that remedy the extreme
16 partisan gerrymandering of past maps. And as a result
17 of this litigation that brings us here today, this
18 Court -- after this Court preliminarily enjoined the
19 further use of the 2016 congressional maps, the voters
20 of North Carolina now have a new congressional map,
21 namely the one enacted by the General Assembly on
22 November 15, 2019.

23 Moreover, in this same 90-day period, the
24 citizens of North Carolina, for the first time, were
25 witnesses to the drafting of their voting districts.

1 The new General Assembly districts and the congressional
2 districts were not drawn in the basement of a political
3 operative's home, as was the case with prior maps, but
4 were drawn in open by the General Assembly in public
5 hearings with live-stream audio and video, in a process
6 that began with non-partisan base maps, which were then
7 amended without reference to past election data.

8 Much has changed with respect to North Carolina
9 redistricting in the past three months. Three months
10 from today, voters in North Carolina are scheduled to
11 vote in the March 2nd, 2020, primary election. Among
12 the many important constitutional and legal issues
13 argued today, the most critical one for the Court is a
14 practical question: Whether the Court should exercise
15 its broad equitable authority to delay the primary
16 election for congressional elections.

17 The Court has considered the nature of the
18 claims likely to be asserted should further review of
19 the newly enacted congressional maps be undertaken. In
20 sum, Plaintiffs contend the 2019 congressional districts
21 bear many of the same constitutional infirmities as its
22 predecessor, the 2016 constitutional map --
23 congressional map, and that these infirmities compel
24 further remedy.

25 In the short time that the parties have had

1 since the enactment of the new congressional districts
2 to frame the issues surrounding the challenge to the
3 newly enacted congressional districts, it is evident
4 that many of these challenges raise significant factual
5 issues that must be resolved prior to the Court reaching
6 the legal conclusion of the constitutionality of these
7 maps.

8 For example, just one of the significant
9 factual disputes that must be resolved by the Court is
10 as follows: Legislative Defendants, while denying any
11 partisan intent in drawing the new congressional
12 districts, argue that the ultimate result of the
13 map-drawing process is a map that shows no extreme
14 partisan gerrymandering because it yields eight
15 Republican-leaning districts and five Democratic-leaning
16 districts, as opposed to the 2016 map which yielded 10
17 Republican-leaning districts and 3 Democrat. This
18 8-to-5 split, the Legislative Defendants point out, is
19 the same as the most frequent and most likely outcome of
20 the thousands of simulations generated by Plaintiffs'
21 experts. Legislative Defendants argue that to advocate
22 for a different split, say 7 to 6, is to advocate for a
23 partisan result far less likely to occur through
24 non-partisan map drafting, according to Plaintiffs' own
25 expert simulations.

1 Plaintiffs, on the other hand, argue that one
2 should not focus on the numerical split but rather
3 concentrate on -- or rather the concentration of
4 Democrats in the 5 Democratic-leaning districts and the
5 concentration of Republicans in the 8 Republican-leaning
6 districts which show, according to the Plaintiffs, an
7 intention to pack voters in into districts making each
8 district impervious to the true will of voters and to
9 lock in the 8-to-5 split in virtually all realistic
10 election environments.

11 But Legislative Defendants disagree, saying
12 that the districts are not as impervious as the
13 plaintiffs contend because when their expert used widely
14 cited online redistricting tool planscore.org to analyze
15 the newly enacted districts, he reported that
16 the PlanScore analysis of the 2019 congressional maps
17 show 7 Democratic-leaning districts to 6 Republican
18 districts. Plaintiffs challenge the accuracy of the
19 PlanScore algorithm.

20 Rulings on factual issues such as this cannot
21 be hastily made by this Court. Our judicial system
22 operates under a rule of law. Our judicial decision --
23 decisions are forged in the crucible of an adversarial
24 process. The decision of this Court in Common Cause
25 versus Lewis that declared the legislative districts

1 enacted by the legislative -- by the General Assembly
2 for House and Senate districts to be unconstitutional
3 was the week of nearly a year of vigorous adversarial
4 litigation culminating in a two-week trial.

5 Likewise, the record before the Court
6 supporting its preliminary injunction of the 2016
7 congressional maps was based on a record compiled before
8 a federal three-judge panel through vigorous adversarial
9 litigation that spanned nearly three years. The
10 thorough and methodical judicial review of redistricting
11 issues is not merely necessitated by the complexity of
12 redistricting challenges, which is certainly a factor,
13 but more importantly is necessary because the
14 Plaintiffs, in challenging maps crafted by the General
15 Assembly, are required through evidence and law to
16 overcome the strong presumption of the constitutionality
17 of acts of the General Assembly and to persuade the
18 Court that there is no reasonable doubt that the
19 districts are unconstitutional and cannot be upheld on
20 any ground. Due process does not allow shortcuts to a
21 thorough and complete judicial review.

22 Much has been argued as to whether this action
23 is moot due to the enactment of the new congressional
24 districts. The Court does not reach that issue today but
25 takes this issue under advisement.

1 But one thing is for certain: The Court, in
2 entering its preliminary injunction on October 28, 2019,
3 expressed grave concerns about delaying and disrupting
4 the voting process and urged the General Assembly to
5 adopt a new congressional map through a process similar
6 to the one undertaken to remedy the House and Senate
7 maps in the Common Cause versus Lewis litigation. The
8 General Assembly did enact a new congressional map, and
9 although one can certainly argue that the process was
10 flawed or that the result is far from ideal, the net
11 result is that the grievous -- grievously flawed 2016
12 congressional map has been replaced.

13 This Court's concern about delaying the
14 electoral process is even more pronounced today than on
15 October 28th. In this regard, the Court finds that the
16 balance of equities has shifted over the past month.
17 This action was commenced by the Plaintiffs on
18 September 27, 2019, late in the election cycle. Had it
19 been commenced earlier, say immediately after the
20 United States Supreme Court June 2019 ruling in Rucho
21 versus Common Cause, the adversarial process could more
22 fully have run its course to allow for a more thoughtful
23 and informed decision. As a practical matter, in the
24 Court's view, there's simply not sufficient time to
25 fully develop the factual record necessary to decide the

1 constitutional challenges to the new congressional
2 districts without significantly delaying the primary
3 elections.

4 After fully considering the record proper and
5 the arguments of counsel, the Court has determined that
6 it will not invoke its equitable authority to further
7 delay the election of members of Congress in
8 North Carolina. It is time for the citizens to vote.
9 The injunction entered by the Court on November 20,
10 2019, delaying the filing period for congressional
11 candidates until further order of this Court is set
12 aside, and it is ordered that the North Carolina State
13 Board of Elections may immediately accept for filing any
14 notices of candidacy from candidates seeking party
15 primary nominations for the United States House of
16 Representatives for congressional districts as defined
17 by the newly enacted Session Law 2019-249, which we've
18 also referred to as House Bill 1028.

19 Much has changed with respect to redistricting
20 in North Carolina in the past 90 days, both with respect
21 to the law and with respect to the process by which maps
22 have been drawn. The results are not perfect, and
23 indeed some may contend that the results are far from
24 perfect, but the current legislative and congressional
25 maps resulting from a decade of litigation will

1 themselves be replaced after the 2020 election cycle
2 because of the upcoming decennial census. It is the
3 Court's fervent hope that the past 90 days becomes a
4 foundation for future redistricting in North Carolina
5 and that future maps are crafted through a process
6 worthy of public confidence and a process that yields
7 elections that are conducted freely and honestly to
8 ascertain fairly and truthfully the will of the people.

9 So ordered.

10 --o0o--
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 STATE OF NORTH CAROLINA)
2) C E R T I F I C A T E
3 COUNTY OF WAKE)
4

5 I, DENISE MYERS BYRD, Court Reporter and Notary
6 Public, do hereby certify that the transcription of the
7 recorded Decision by Superior Court Three-Judge Panel for
8 Redistricting Challenges was taken down by me
9 stenographically to the best of my ability and thereafter
10 transcribed under my supervision; and that the foregoing
11 pages, inclusive, constitute a true and accurate
12 transcription of said recording.

13 Signed this the 22nd day of April 2020.
14
15

16 Denise Myers Byrd
17 CSR 8240, RPR, CLR 102409-2
18
19
20
21
22
23
24
25

Electronically Filed
2021-11-30 13:44:54

2016 Contingent Congressional Plan Committee Adopted Criteria

Equal Population

The Committee will use the 2010 federal decennial census data as the sole basis of population for the establishment of districts in the 2016 Contingent Congressional Plan. The number of persons in each congressional district shall be as nearly as equal as practicable, as determined under the most recent federal decennial census.

Contiguity

Congressional districts shall be comprised of contiguous territory. Contiguity by water is sufficient.

Political data

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. Data identifying the race of individuals or voters shall not be used in the construction or consideration of districts in the 2016 Contingent Congressional Plan. Voting districts (“VTDs”) should be split only when necessary to comply with the zero deviation population requirements set forth above in order to ensure the integrity of political data.

Partisan Advantage

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.

Twelfth District

The current General Assembly inherited the configuration of the Twelfth District from past General Assemblies. This configuration was retained because the district had already been heavily litigated over the past two decades and ultimately approved by the courts. The Harris court has criticized the shape of the Twelfth

District citing its “serpentine” nature. In light of this, the Committee shall construct districts in the 2016 Contingent Congressional Plan that eliminate the current configuration of the Twelfth District.

Compactness

In light of the Harris court’s criticism of the compactness of the First and Twelfth Districts, the Committee shall make reasonable efforts to construct districts in the 2016 Contingent Congressional Plan that improve the compactness of the current districts and keep more counties and VTDs whole as compared to the current enacted plan. Division of counties shall only be made for reasons of equalizing population, consideration of incumbency and political impact. Reasonable efforts shall be made not to divide a county into more than two districts.

Incumbency

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.

Electronically Filed
2021-11-30 13:44:54

Joint Meeting of Committees

August 12, 2021

House Committee on Redistricting
Senate Committee on Redistricting and Elections

Criteria Adopted by the Committees

- **Equal Population.** The Committees will use the 2020 federal decennial census data as the sole basis of population for the establishment of districts in the 2021 Congressional, House, and Senate plans. The number of persons in each legislative district shall be within plus or minus 5% of the ideal district population, as determined under the most recent federal decennial census. The number of persons in each congressional district shall be as nearly as equal as practicable, as determined under the most recent federal decennial census.
- **Contiguity.** No point contiguity shall be permitted in any 2021 Congressional, House, and Senate plan. Congressional, House, and Senate districts shall be comprised of contiguous territory. Contiguity by water is sufficient.
- **Counties, Groupings, and Traversals.** The Committees shall draw legislative districts within county groupings as required by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002) (*Stephenson I*), *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (*Stephenson II*), *Dickson v. Rucho*, 367 N.C. 542, 766 S.E.2d 238 (2014) (*Dickson I*) and *Dickson v. Rucho*, 368 N.C. 481, 781 S.E. 2d 460 (2015) (*Dickson II*). Within county groupings, county lines shall not be traversed except as authorized by *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*.

Division of counties in the 2021 Congressional plan shall only be made for reasons of equalizing population and consideration of double bunking. If a county is of sufficient population size to contain an entire congressional district within the county's boundaries, the Committees shall construct a district entirely within that county.

- **Racial Data.** Data identifying the race of individuals or voters *shall not* be used in the construction or consideration of districts in the 2021 Congressional, House, and Senate plans. The Committees will draw districts that comply with the Voting Rights Act.
- **VTDs.** Voting districts ("VTDs") should be split only when necessary.
- **Compactness.** The Committees shall make reasonable efforts to draw legislative districts in the 2021 Congressional, House and Senate plans that are compact. In doing so, the Committee may use as a guide the minimum Reock ("dispersion") and Polsby-Popper ("perimeter") scores identified by Richard H. Pildes and Richard G. Neimi in *Expressive Harms, "Bizarre Districts," and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno*, 92 Mich. L. Rev. 483 (1993).
- **Municipal Boundaries.** The Committees may consider municipal boundaries when drawing districts in the 2021 Congressional, House, and Senate plans.

Joint Meeting of Committees

August 12, 2021

House Committee on Redistricting

Senate Committee on Redistricting and Elections

- **Election Data.** Partisan considerations and election results data *shall not* be used in the drawing of districts in the 2021 Congressional, House, and Senate plans.
- **Member Residence.** Member residence may be considered in the formation of legislative and congressional districts.
- **Community Consideration.** So long as a plan complies with the foregoing criteria, local knowledge of the character of communities and connections between communities may be considered in the formation of legislative and congressional districts.

Electronically Filed
2021-11-30 13:44:54

TRANSCRIPTION OF AUDIO FILE
NORTH CAROLINA HOUSE COMMITTEE
ON REDISTRICTING
OCTOBER 5, 2021

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

1 UNKNOWN MALE: House Committee on
2 Redistricting, Tuesday, October 5, 2021, 643 LOB.

3 CHAIRMAN HALL: Committee will come to
4 order. The Chair apologizes for delay in getting
5 started this afternoon. Thanks to the committee
6 members for their patience.

7 Members, I want to start off by thanking
8 you all, the members, staff, and the public who
9 chose to participate in our public hearings across
10 the state over the last several weeks. I think we
11 heard varying opinions. It was great to see folks
12 engaged, and we had members, many -- many member,
13 not even just the folks on this committee, but
14 several members of the House and the Senate, who are
15 not on this committee, who attended those meetings
16 and gave folks a chance to be heard about what they
17 want this process to look like.

18 The purpose of today's meeting is to --
19 just to do some Housekeeping to give folks an idea
20 of what the map-drawing process is going to look
21 like. And we anticipate, beginning tomorrow,
22 starting the map-drawing process, and so we want to
23 lay out very clearly what the criteria will be -- or
24 rather the rules will be for this committee for
25 drawing maps.

1 So we'll just jump right into it. We're
2 going to have four terminals. And if you look
3 around this room, you see the big screens. There
4 are going to be four of those. One will be
5 dedicated to the chair of this committee. One will
6 be dedicated to the minority leader, or his
7 designee. I should have said on the first station,
8 it will be dedicated to the chairman or chair's
9 designee. And then the other two will be for any
10 other committee member, or any member of the House
11 who wishes to come in and draw on those terminals.

12 For now, the plan is to go from 9:00 to
13 5:00 each day. So we'll come in, gavel in at 9
14 o'clock. This committee room will stay open
15 throughout the day. Those of you who have been
16 through this before, you know it's not like a
17 typical committee where we're always with a chair
18 standing up here, like I am right now. What we
19 typically do, we'll gavel in, and folks can go draw.

20 We may take breaks throughout the day. We
21 may just leave the committee room open. We want to
22 be cognizant of staff, let them be able to eat
23 lunch, and that sort of thing, so we may take a few
24 breaks and there. But by and large, the committee
25 room is going to be open from 9:00 to 5:00. We're

1 going to plan to do that Monday through Friday, for
2 now.

3 So, as of right now, chair anticipates
4 having this committee room open throughout the rest
5 of this week, until Friday at 5 o'clock. But the
6 chair will say that if significant progress is made,
7 we may not keep the committee open all day on
8 Friday, so that we don't have to keep staff here.
9 And obviously, folks will be -- members will be
10 traveling back to their districts. To prevent them
11 from having to travel back on Friday night, we may
12 go ahead and may not have a committee meeting Friday
13 or may end the committee early on Friday. So just
14 wait and see on that front.

15 And this is a rule that I want to make sure
16 all members are clear on, but this committee, and
17 the House as a whole, will only consider maps that
18 are drawn in this committee room, on one of the four
19 stations. So if a map is not drawn on one of these
20 four stations, in this committee room, during those
21 committee hours that the committee is open, then
22 those maps will not be considered for a vote by this
23 committee, and of course, will not be considered for
24 a vote by the House.

25 And we'll be able to know because when you

1 put a map into one of these computers, that becomes
2 a matter of public record, and we can tell which
3 were drawn on these computers. It has to be drawn
4 in this committee room.

5 When this committee is open, we'll maintain
6 a live stream and live audio during the whole time
7 of map-drawing, so that the process will be, we
8 believe, just about as transparent as we humanly can
9 do. And that's what we heard in public comment. We
10 heard folks say, "We want a transparent process."

11 Well, that's what we're going to give the
12 public. We're going to give the members of this
13 body and the public a transparent process where we
14 draw maps in this room with a live audio feed and a
15 live video feed. And we're going to create a rule
16 that we're only going to consider the maps that are
17 drawn in this room, in the House, in this committee,
18 and ultimately, in the House.

19 Members, we're going to continue to have
20 session, of course, regular session, throughout this
21 process. As the members know, we're still dealing
22 with the budget right now. And so, obviously, the
23 speaker is aware that this process of redistricting
24 takes a lot of labor, and we'll give us ample time
25 to do that. But we have to continue with the

1 business of the House in general, so we'll do just
2 the best we can on that, understanding we're
3 operating under a tight time line.

4 And we've talked about that a lot
5 throughout this committee process that, because of
6 the delay in the census data, we're just now getting
7 to a point where we can draw these maps, after doing
8 the public comment we wanted to do. But with filing
9 coming in December, we really need to get these maps
10 drawn as close as we can, or at least by the end of
11 this month, if not sooner.

12 That's going to be our goal to try to get
13 these things done by the end of the month. That way
14 we can give the board of elections time to get
15 ballots printed and let folks know what districts
16 they're going to be in, so they can decide if they
17 want to run or not run. Whether they be members of
18 this committee, or folks who are not in the General
19 Assembly at all.

20 Members, with that being said --

21 REPRESENTATIVE RICHARDSON: Mr. Chairman,
22 can I have a quick question?

23 CHAIRMAN HALL: I'm going to take questions
24 in a little while, but you know, if it's something
25 that's really important right now, okay. All right.

1 I'm going to take questions at the end.

2 So for ground rules, that's it for now. I
3 may have left something out, and if so, members can
4 ask me in a moment.

5 The second step in today's committee is
6 going to be the presentation of the optimum county
7 groupings that have been come up with by the non-
8 partisan staff. And so the chair is going to turn
9 this over to Erika Churchill, in just a moment, to
10 make a presentation on the optimum county groupings
11 that have been crafted by the non-partisan staff.

12 But what the chair will ultimately say
13 about these groupings is: in years past, if you've
14 been on this committee, you know that we have
15 adopted certain groupings. Chair does not
16 anticipate adopting any particular grouping this
17 time around because there are multiple options
18 within the county groupings. And that's what you've
19 got in front of you, and that Ms. Churchill is going
20 to explain in more detail here in just a bit.

21 Rather than limit any member of this
22 committee into just certain groupings, what the
23 chair anticipates is that members can use whichever
24 combination of the groupings that you see before
25 you, in drawing whichever map a member sees fit to

1 draw.

2 The only groupings that will be considered
3 are those that are in the packet that's in front of
4 you. These were initially put forth by Duke
5 University, and a non-partisan staff has also drawn
6 their own groupings and confirmed that the Duke
7 groupings were correct. And so we're confident that
8 using the algorithm, as required in the law, that
9 these are the possible groupings -- the possible
10 optimum groupings.

11 Again, I'll answer questions momentarily on
12 that front. But with that, the chair is going to
13 turn it over to Erika Churchill to speak to the
14 county groupings and to also show an example of how
15 to use the terminals when drawing the maps.

16 Ms. Churchill, you're recognized.

17 MS. CHURCHILL: Thank you, Mr. Chair. As
18 you mentioned, central staff, were asked to take a
19 presentation by Christopher Cooper, Blake Esselstyn,
20 Gregory Herschlag, Jonathan Mattingly, and Rebecca
21 Tippet from the quantifying gerrymandering group,
22 which is a non-partisan research group centered at
23 Duke Math.

24 And they produced a paper entitled, "North
25 Carolina General Assembly County Clusterings from

1 the 2020 Census." It was posted by Mr. Herschlag on
2 August 17, 2021. And we took it as a recipe,
3 because throughout this, they gave instructions as
4 to what they believed were the optimum county
5 groupings.

6 I would note that they particularly say,
7 "However, there are often multiple optimal county
8 clusterings that minimize county splitting." And
9 they reference two other blogs that they have
10 posted. The release of the 2020 census data allows
11 us to determine the possible county clusterings for
12 both the North Carolina State House and State Senate
13 redistricting processes.

14 The one part of Stephenson v. Bartlett
15 which this analysis does not reflect, is compliance
16 with the Voting Rights Act. To determine the county
17 clusters, we used the implementation of the court
18 order procedure described in Carter, et al." The
19 site they gave for Carter, et al. is "Optimal
20 Legislative County Clustering in North Carolina" by
21 Daniel Carter, Zach Hunter, Dan Teague, Gregory
22 Herschlag, and Jonathan Mattingly. Statistics and
23 Public Policy Volume 7, 2020.

24 For the state House, what you have before
25 you in hardcopy, on the screen, and I believe they

1 will be posted to the web, are the nine maps that
2 resulted from this paper with respect to the North
3 Carolina State House. The very first one does not
4 have the entire state assigned. They call this the
5 fixed groupings. Throughout the maps that we'll go
6 through, you will find that these will be hash
7 tagged. A little bit of crosshatching on them to
8 identify these are the ones that this particular
9 group say are the optimal.

10 They created 33 clusters containing 107 of
11 the 120 districts that are fixed based on
12 determining optimal county clusters. 11 of these
13 clusters contain 1 district, meaning that 11 of the
14 120 House districts are fixed.

15 So as you're looking at the map, whether in
16 hardcopy or online, you will see that there is a
17 letter assigned to each. I'm just going to pick on
18 Carteret and Craven, in the eastern part of the
19 state, in the blue shading, it is Q2. The Q is just
20 an easy letter reference if you need to talk about
21 that particular grouping with anyone. The 2 means
22 that that is population sufficient for 2 House
23 members. The same if you look just to the left, in
24 the gray, the green Lenore Jones BB cluster, or
25 grouping, has a 1 underneath it, meaning that would

1 be a single member grouping.

2 So the white areas that are left can each
3 be assigned two different ways. So that would get
4 you to the lovely House maps that are left.

5 (Sound interruption)

6 So starting with the Western area that was
7 left kind of unassigned, needs to be grouped. As
8 you will see it on the Duke House 01 map, it would
9 be districts HH and II. The first option here would
10 be to combine Surry, Wilkes, and Alexander to create
11 a two-member district. And Alleghany, Ashe,
12 Watauga, and Caldwell to create a two-member
13 district.

14 If you will skip over to Duke House 05,
15 this would give you a visual of the second option
16 for this particular grouping. It would be a
17 combination of Surry, Alleghany, Ashe, and Wilkes
18 for a two-member grouping. And Watauga, Caldwell,
19 and Alexander for a two-member grouping.

20 Staying on the Duke House 05, and heading
21 east to the southeast, the options in that southeast
22 area here would be to combine Wayne and Sampson into
23 a two-member district. Duplin and Onslow into a
24 three-member district. And Pender and Bladen into a
25 one-member district.

1 And so if you just fast forward one to Duke
2 House 08, the second option in the southeastern
3 corner would be to combine Wayne and Duplin into a
4 two-member district. Sampson and Bladen into a one-
5 member district and Onslow and Pender into a three-
6 member district.

7 Duke House 05 will be our example of the
8 northeastern corner. Option one would be to combine
9 Hertford, Gates, Pasquotank, and Camden into a
10 single-member district. And Currituck, Dare, Hyde,
11 Pamlico, Beaufort, Washington, Tyrrell, Perquimans,
12 and Chowan into a two-member district.

13 The other option in the northeastern
14 corner, if you will go to Duke House 06, you can see
15 a visual of that. The single member district would
16 be Currituck, Pasquotank, Perquimans, and Tyrrell.
17 The two-member district would be Beaufort, Pamlico,
18 Hyde, Dare, Washington, Chowan, Camden, Gates, and
19 Hertford.

20 Each of the multimember districts
21 throughout all of these would need to be divided
22 into single-member districts for compliance with
23 Stephenson opinion.

24 I should probably note, just so that
25 everybody is aware, the ideal population for a North

1 Carolina House district is 86,995 people, according
2 to the 2020 Decennial Census, with a plus or minus 5
3 percent deviation. That leaves a range of 82,645 to
4 91,345 people.

5 CHAIRMAN HALL: Okay, members. The chair
6 is going to give Ms. Churchill an opportunity in a
7 moment to display and give an example of how the
8 terminals will work.

9 But if that is it for your presentation on
10 groupings, if you'll stand there for just a second.

11 MS. CHURCHILL: Yes, sir.

12 CHAIRMAN HALL: Committee members, do any
13 members have any questions for legislative staff at
14 this point about groupings? And again, chair's
15 going to take some questions at the end.

16 Representative Torbett.

17 REPRESENTATIVE TORBETT: Just if she could
18 repeat the numbers she used there at the last time.
19 There was three. There was a total and the range.

20 MS. CHURCHILL: Okay. Ideal population for
21 a North Carolina House of Representatives districts,
22 86,995. Creating a plus or minus 5 percent range of
23 82,645 to 91,345 people.

24 CHAIRMAN HALL: The chair is going to make
25 sure that all committee members have a document

1 showing the ideal population for each level of
2 grouping. So for one-member grouping, two-member.
3 And I know we've had that in the past, and it may
4 have already been passed out at one of the meetings
5 we've had. So let's make sure, if we will -- we'll
6 send that out to the committee via email, and we'll
7 have some paper copies at the meeting tomorrow.

8 MS. CHURCHILL: We will actually have a
9 laminated copy at every station.

10 CHAIRMAN HALL: Okay, great.

11 MS. CHURCHILL: And we will also be glad to
12 email that out to everyone. It has been passed out
13 at a previous meeting.

14 CHAIRMAN HALL: And we're going to go ahead
15 and have paper copies for folks to be able to take
16 with them if they want to.

17 MS. CHURCHILL: Glad to take care of that.

18 CHAIRMAN HALL: Representative Harrison.

19 REPRESENTATIVE HARRISON: Thank you,
20 Mr. Chair. Thank you, Erika.

21 If I heard you right, so did you -- when
22 you started -- and I've got the article in front of
23 me from Doctors Mattingly, et al. -- did you say
24 that the fixed -- the fixed clusters -- we're
25 working from a basis of the fixed clusters, and

1 those represent 107 of the 120 members; is that
2 right?

3 MS. CHURCHILL: Yes, ma'am.

4 REPRESENTATIVE HARRISON: And then our
5 options are to figure out how to manipulate the
6 other white, unshaded counties, and that's what
7 we're going to be doing with the other map options?

8 MS. CHURCHILL: Mr. Chair?

9 CHAIRMAN HALL: Lady is recognized to
10 respond.

11 MS. CHURCHILL: Yes, Representative
12 Harrison. With the crosshatched districts in the
13 Duke House fixed, that would establish the groupings
14 for 107 of the 120 districts. Of that 107, 11 -- or
15 of the 33 clusters, 11 of those clusters would be
16 single-member districts. The remainder would still
17 need to be divided into single-member districts. So
18 the counties in white that have no shading, no
19 crosshatching, would be the options to combine
20 together to create the remaining 13 House districts.

21 CHAIRMAN HALL: And members, and for those
22 folks listening at home, the chair has often
23 referred to these maps as groupings, and you hear
24 Ms. Churchill refer to them as clusters, and those
25 are synonymous terms, just for those listening, to

1 make sure everybody understands. If you've been
2 through this before, you know that. But if you're
3 new to this committee, or you're listening online
4 and haven't watched this committee before, that may
5 be confusing.

6 But is that your understanding,
7 Ms. Churchill?

8 MS. CHURCHILL: Yes, sir. There's actually
9 three terms that I've heard for it. There's the
10 clustering, which is the phrase that the group from
11 Duke used in their paper, which is what I was
12 reading from. There's also groupings, which is kind
13 of in the court orders, as well as clustering. The
14 other phrase I've heard used to describe this is
15 podding, or creating a pod. I believe all three to
16 be completely interchangeable.

17 CHAIRMAN HALL: That's right. That's the
18 chair's understanding as well.

19 Representative Harrison.

20 REPRESENTATIVE HARRISON: Mr. Chair, if we
21 have questions about the clusters and the process,
22 should we ask them now of you and the committee, or
23 do you want her to talk about the technical and then
24 have the questions after that?

25 CHAIRMAN HALL: At this point, if you've

Page 17

1 got a question for the chair, let's just wait. This
2 is just questions for right now to Ms. Churchill.
3 She's not going to leave after this. She'll be
4 right up here, so if we have another question for
5 her later. But while they're there at the podium,
6 the chair thinks it's appropriate to give members
7 the opportunity to ask them questions.

8 Representative Warren.

9 REPRESENTATIVE WARREN: I've got a question
10 for Ms. Churchill.

11 I'm sorry, when you look at the white
12 clusters, and the different iterations of them on
13 the following maps, I noticed that the numbers stay
14 the same within those configurations. So is this
15 just a matter of looking at those particular
16 counties in terms of their connection to each other,
17 continuity of it, or the contiguousness of it, or
18 whatever the word is we're looking for there?

19 MS. CHURCHILL: So, Mr. Chair, if I might?

20 CHAIRMAN HALL: Lady may answer.

21 MS. CHURCHILL: So you are absolutely
22 correct. So starting kind of in that western
23 corner, the counties of Surry, Alleghany, Ashe,
24 Watauga, Wilkes, Caldwell, and Alexander, that white
25 area has a population in it sufficient to support

1 four single-member districts. So it becomes a
2 question of how to group those counties together to
3 best create districts that are in compliance with
4 Stephenson. And there are two options there. Both
5 would be two-member districts. It's just a matter
6 of what the committee chose to use.

7 REPRESENTATIVE WARREN: And follow-up?

8 CHAIRMAN HALL: The gentleman is
9 recognized.

10 REPRESENTATIVE WARREN: So, Ms. Churchill,
11 one of the things I noticed in the hearings I
12 attended was some folks in the general public not
13 having an understanding that we try to do these in
14 terms of, not breaking down counties or
15 municipalities, but to stay within the mandates of
16 the population, and you're staying within this
17 cluster. That, in some cases, creates a situation
18 where you have no choice but to comply with the
19 district's population; is that correct?

20 CHAIRMAN HALL: The lady is recognized.

21 MS. CHURCHILL: I will attempt that one.
22 And I'm going to pick on the chair for just a
23 moment. His home county of Caldwell --

24 CHAIRMAN HALL: Join the club.

25 MS. CHURCHILL: -- as an example.

1 According to the federal decennial census, it's
2 80,652 people, which is outside that ideal range of
3 82,645 to 91,345 for a single-member district. So
4 it would need to be combined with some other
5 contiguous county to create a single-member
6 district. Or it would need to be divided with some
7 other contiguous counties to create two
8 single-member districts. That would be up to the
9 committee how they wanted to do that.

10 REPRESENTATIVE WARREN: Thank you very
11 much.

12 CHAIRMAN HALL: Further questions or any
13 comments for legislative staff?

14 Representative Dixon.

15 REPRESENTATIVE DIXON: Thank you,
16 Mr. Chair.

17 Ms. Churchill, without having to add them
18 up, how many House seats are there in the white area
19 including Duplin and then this white area with
20 Tyrrell?

21 MS. CHURCHILL: So --

22 Mr. Chair?

23 The area --

24 CHAIRMAN HALL: The lady is recognized.

25 MS. CHURCHILL: -- including Duplin, Wayne,

1 Sampson, Bladen, Pender, and Onslow is population
2 sufficient to support six single-member House
3 districts. That northeastern corner beginning at
4 Pamlico, running all the way up to Currituck and
5 over to Hertford, is population sufficient to
6 support three single-member districts.

7 REPRESENTATIVE DIXON: Thank you.

8 CHAIRMAN HALL: Further discussion or any
9 questions for legislative staff?

10 Okay. Ms. Churchill, if you want to give
11 us an example of how to use these terminals, the
12 lady is recognized to do that.

13 MS. CHURCHILL: I'm going to ask Will.
14 He's going to come up and help me.

15 CHAIRMAN HALL: Along with -- yeah,
16 absolutely.

17 MS. CHURCHILL: So I would note a couple of
18 things, as Will is getting us started. Each one of
19 these terminals will be directly fed to a
20 livestream. An audio from that terminal will be fed
21 to the livestream. There will not be a video
22 associated with that terminal. There will be a
23 video of the room that will be seen by the public.
24 The public here in the room can choose to use the
25 screens here, or they can choose to use the North

1 Carolina General Assembly Wi-Fi to log on, if they
2 wanted to focus on just one of the four terminals.

3 And I'm going to walk over to the terminal,
4 so we can turn that on, so you'll see what it's
5 going to look like. So from here, you will be able
6 to see a House plan. And so, these are just
7 examples that we have been testing to make sure that
8 everything works. These are existing plans; they
9 are nothing new. We just wanted to make sure that
10 everyone had a map that could be seen, can be used;
11 the software works.

12 So this is what you would see on the screen
13 in the room. We will leave this up and going until
14 after the committee adjourns, so that someone can
15 walk around and see what an actual drawing station
16 would look like as you were sitting at it to engage
17 with the staff to instruct us how to draw a map of
18 your choosing.

19 CHAIRMAN HALL: And, Ms. Churchill, if you
20 will describe what's the large TV to your right for?

21 MS. CHURCHILL: They are identical. So a
22 staff member will be sitting at the smaller screen.
23 Member, or whoever -- whatever group of members are
24 together, will have the larger screen available to
25 them to stand behind, to sit behind, just so that

1 it's a little larger, a little easier to see.

2 CHAIRMAN HALL: Members, do we have any
3 questions for -- questions or debate about how the
4 process will work in terms of what Ms. Churchill has
5 just described? Again, I'm going to stand for some
6 questions.

7 Representative Torbett.

8 REPRESENTATIVE TORBETT: Just for
9 reference, it's my understanding -- I think she
10 eluded to it -- the staffer is there to actually to
11 the map drawing with assistance and information from
12 the member; is that how that's going to work?
13 Because some of us in here have never done map
14 drawing.

15 CHAIRMAN HALL: The staff folks are there
16 because they understand how to use the software, but
17 it will be completely up to the member to direct the
18 staff member as to how to draw those maps. And
19 staff will -- it wouldn't be appropriate, of course,
20 for staff to make decisions about how to draw. But
21 to answer your question, yeah. You're absolutely
22 right. It will be up to the member to tell the
23 staff member, who knows how to use the technology,
24 how to draw.

25 Representative Carney.

1 REPRESENTATIVE CARNEY: So I'm not sure if
2 this question is for now or later, but. So if I
3 come in as a member and I'm drawing on a map, and I
4 leave the room, somebody else comes in, draws
5 another map, and then I want to make an amendment,
6 how does that work?

7 CHAIRMAN HALL: The chair is going to
8 initially respond to that and let Ms. Churchill
9 respond to sort of the mechanics of how that works.
10 But, in the past, what has happened is, if you go in
11 and draw a map, and let's say you want to take a
12 break and go eat lunch, or whatever it is you want
13 to do, you can save your map in the system, so that
14 somebody doesn't come behind you and start drawing
15 on the map that you've already created. So you'll
16 be able to save that. You'll be able to come back
17 later on and draw that map.

18 Now, Ms. Churchill, is that correct, in
19 terms of technology?

20 And I'm going to continue on with that to
21 try to answer what I think your whole question is,
22 but yeah.

23 REPRESENTATIVE CARNEY: Okay.

24 MS. CHURCHILL: So, yes, sir. Unlike with
25 our drafting system where you were used to us being

1 able to get to any prior iteration that we have
2 drafted for you, the mapping software doesn't work
3 quite like that. But we are set up internally to
4 make sure that the map that you closed out before
5 you stepped away to get a bite to eat or go to a
6 committee meeting is always there.

7 When you come back, we will be copying that
8 map to pick up exactly where you left off, so that
9 we will always have that first map, just in case
10 something goes wrong, and you just need to go back
11 to it. So there will be an option for you to pick
12 up wherever you left off and continue going from
13 there. There will be an option for you, if you
14 really like what you -- hated what you did in that
15 second session, you can go back to the first session
16 and pick up again and start over.

17 CHAIRMAN HALL: And to answer your question
18 about how to, perhaps, change a member that another
19 member's drawn -- and I guess the real question is
20 amendments -- there will be an opportunity for
21 members of the committee to put forth amendments on
22 whatever map or maps this committee ultimately takes
23 up.

24 And the chair anticipates, as we've done in
25 the past, members can decide whether they want to

1 put forth a whole map of the state as an amendment,
2 or whether they're just wanting to amend certain
3 groups or I guess even certain districts. Members
4 will be given an opportunity to put those forth.

5 REPRESENTATIVE CARNEY: So just a follow-
6 up.

7 CHAIRMAN HALL: Yes. Lady is recognized.

8 REPRESENTATIVE CARNEY: And I have never
9 drawn these maps before, so that's why I have all
10 these questions. So these amendments would come --
11 our amendments would come after we have a map?

12 CHAIRMAN HALL: Yeah. So if the lady will
13 think about it just like a normal committee meeting,
14 where a bill is before the committee --

15 REPRESENTATIVE CARNEY: Right.

16 CHAIRMAN HALL: -- and members are putting
17 forth their own amendments, or perhaps they're
18 wanting their own bills to be put forth at a given
19 time. Really, the easier way to think of it is,
20 members are wanting to put forth their amendments to
21 the bill that's on the floor. The opportunity to do
22 that will be there.

23 If, let's just say that you like the map
24 that's before the committee, but for a couple of the
25 groupings, and you know, rather -- if you just want

1 to focus your argument, or whatever the case may be,
2 on those two groupings, the lady can say, look, here
3 are the two groupings. I'm just putting those forth
4 as an amendment. I'm okay with the rest of the map.
5 The opportunity to do that will be given.

6 REPRESENTATIVE CARNEY: Thank you very
7 much.

8 CHAIRMAN HALL: And let me say with that,
9 obviously, we're under a tight time constraint. And
10 so we don't have time for the committee to consider
11 100 maps from every member, you know, who's on
12 there. So at some point, the chair will have to
13 limit that. But as of now, the chair doesn't
14 anticipate having to limit members amendments or
15 proposed maps. Chair thinks that we'll be able to
16 do that in a time efficient way, and still get our
17 work done in time for filing.

18 Other questions or debate again for
19 legislative staff?

20 REPRESENTATIVE RICHARDSON: Mr. Chairman?

21 CHAIRMAN HALL: Representative Richardson.

22 REPRESENTATIVE RICHARDSON: If I might.
23 Would it be the best practice if when we're drawing
24 -- if we're doing a map, that we articulate our
25 reasonings? Like the criteria that we have listed

Page 27

1 and adopted, like communities of interest, should we
2 -- if we do an amendment, or do part of a map, or do
3 part of a district, should we state the reasoning on
4 there that it follows the criteria and which
5 criteria it follows or just not comment? Or what
6 are we -- give us some guidance on that.

7 CHAIRMAN HALL: You know, that's really up
8 to each individual member as to what they want to
9 say while they're drawing the map. And if a member
10 wants to say, "Here's why I'm doing this," every
11 member is free to do that. This committee has
12 adopted a set of criteria that's to be used in
13 drawing the maps, and so that will be the member's
14 choice whether they think that is a best practice or
15 not a best practice.

16 Further questions or debate?

17 Representative Carney.

18 REPRESENTATIVE CARNEY: Thank you,
19 Mr. Chairman. So if -- did I hear you or Erika say
20 that the public is going to have access to all these
21 portals; is that correct?

22 CHAIRMAN HALL: So --

23 REPRESENTATIVE CARNEY: As we are drawing.

24 CHAIRMAN HALL: -- I'll let --

25 Ms. Churchill, go ahead and answer that,

1 and I may weigh in.

2 MS. CHURCHILL: Okay.

3 So, Representative Carney, as this is set
4 up currently, a member of the public can choose to
5 look at what is happening at station one online. A
6 member of the public could choose to come to the
7 room and sit in the back and could see all four
8 stations going simultaneously. But to the best of
9 our knowledge, the public will not be standing
10 behind a station, over your back, over staff's back,
11 instructing, conversating, that kind of thing.

12 REPRESENTATIVE CARNEY: Okay. Just a
13 follow-up.

14 CHAIRMAN HALL: The lady is recognized.

15 REPRESENTATIVE CARNEY: So will that --
16 each time a member comes and draws a map, is that
17 archived for the public?

18 CHAIRMAN HALL: So the chair's
19 understanding is that any map that's drawn by a
20 member of this committee in this committee room
21 becomes a public record.

22 Ms. Churchill, will you speak to that?

23 MS. CHURCHILL: Yes, sir.

24 Our understanding, as well, because this
25 map is being drawn in public before the committee,

1 it is a public record. We will have a copy of it.
2 It will be saved forevermore. At this time, we have
3 not been instructed to place any of those maps
4 online. If the committee so instructs, we will be
5 happy to do that.

6 REPRESENTATIVE CARNEY: So that -- may I
7 just comment why I'm asking that question?

8 CHAIRMAN HALL: The lady is recognized.

9 REPRESENTATIVE CARNEY: Is through the
10 public hearings, I was -- attended a lot of those,
11 and that was one of the questions that kept coming
12 up over and over again is, will the public have an
13 opportunity to be a part of drawing these maps, or
14 seeing, actually having access to the drawing of
15 these maps, publicly. That was why I was going that
16 way.

17 CHAIRMAN HALL: Representative Cooper-
18 Suggs.

19 REPRESENTATIVE COOPER-SUGGS: Thank you,
20 Mr. Chair.

21 And thank you, Erika.

22 Still on that same vein, in talking about
23 the public, and the maps that we're going to see, we
24 know that the public has had that keen interest, by
25 attending the sessions, as well as the feedback that

1 they have given. So what steps are you proposing to
2 assure that the public be involved in these maps
3 that represent them?

4 CHAIRMAN HALL: And if the lady will
5 indulge me to wait just a minute, until I can let
6 Ms. Churchill sit down. Because the chair is going
7 to take questions like that one, for example.

8 If there are any other questions for
9 Ms. Churchill --

10 And I will come back to you, Representative
11 Cooper-Suggs.

12 REPRESENTATIVE COOPER-SUGGS: Thank you so
13 much.

14 CHAIRMAN HALL: Representative Torbett.

15 REPRESENTATIVE TORBETT: Thank you. I was
16 going hope I think this one fits in this segment.
17 Is there intent -- should we have an anomaly or a
18 glitch in the technology, do we think the mapping
19 should suspend until such time that that glitch will
20 reconnect or --

21 CHAIRMAN HALL: We'll deal with that if and
22 when it happens at the time. Let's hope it doesn't.
23 Representative Brockman.

24 REPRESENTATIVE BROCKMAN: I'm not really
25 sure if this question was answered, but

1 Representative Carney asked if members of the public
2 would know who was drawing maps at the specific
3 time. Will they know, say, for example,
4 Representative Brockman is working on a map at this
5 time; will they know that?

6 CHAIRMAN HALL: Ms. Churchill?

7 MS. CHURCHILL: At this time, the way it is
8 set up, no, sir. They will know that -- they will
9 be able to see what is being drawn on station one.
10 From the audio, they would be able to hear your
11 voice, your instructions, but there would not be a
12 label that was there at all times to say that this
13 is Representative Brockman speaking. We can try to
14 work on something of that nature, if the committee
15 would like.

16 CHAIRMAN HALL: The gentlemen is
17 recognized.

18 REPRESENTATIVE BROCKMAN: But there would
19 be something that says, at the end of the day, that
20 this is Representative Brockman's map; is that
21 correct?

22 CHAIRMAN HALL: Yes. So the chair will
23 speak to that. There will be something on the final
24 map that says who has drawn that map, at least the
25 original part of it. It may be amended, but the

1 amendment will have the member's name on that. And
2 we've done that in the past.

3 Ms. Churchill.

4 MS. CHURCHILL: And I might kind of step in
5 just a little bit to remind everyone that the maps
6 are not what the General Assembly enacts. It is the
7 bill that is sponsored by a bill sponsor, just like
8 every other bill in the institution. The amendments
9 the same way. For an amendment offered by
10 Representative Brockman, the amendment will state
11 that it was offered by Representative Brockman. It
12 will have attached with it a visual of the map, but
13 it is still technically the amendment that the
14 General Assembly is voting on. So yes, sir. All of
15 that will come together.

16 CHAIRMAN HALL: Okay, members. Are there
17 any questions that are just for Ms. Churchill, at
18 this point? I know another one may arise, so she's
19 not leaving.

20 Okay. If not, Ms. Churchill, thank you
21 very much for your eloquent presentation.

22 Members, the chair is going to hand the
23 gavel over to Representative Saine and stand for
24 questions.

25 VICE CHAIR SAINE: All right,

1 Representative Hall. Are you ready?

2 CHAIRMAN HALL: I am. And, Mr. Chairman,
3 if you will start with Representative Cooper-Suggs.
4 She had a question that was appropriate for the
5 chair, but I wanted to wait until I got over here to
6 answer it.

7 VICE CHAIR SAINÉ: The chair would be happy
8 to do that.

9 Representative Cooper-Suggs.

10 REPRESENTATIVE COOPER-SUGGS: I can wait.
11 I can hold off for a moment. If that's all right.

12 CHAIRMAN HALL: Okay. Fair enough.

13 VICE CHAIR SAINÉ: Fair enough. Thank you,
14 Representative Cooper-Suggs.

15 Representative Richardson, I think I've got
16 you, and then maybe Representative Harrison.

17 REPRESENTATIVE RICHARDSON: Mr. Chairman,
18 thank you for taking these questions. When we went
19 to these public hearings, I heard over, and over,
20 and over again several things, you know, communities
21 of interest, you know, and the like. But one thing
22 I heard repeatedly was -- is that the public wanted
23 input after we came up with maps, before we voted on
24 them. I know we're on a tight budget, a tight
25 schedule, you know, with this, and it's going to be

1 tough. But is it your plan to have some public
2 hearings after -- before we vote on the final maps,
3 but while the maps are up for consideration?

4 CHAIRMAN HALL: Thank you, Representative
5 Richardson. So what I will say is that I do
6 anticipate there being some manner of public hearing
7 on whatever the final proposed version of the map
8 is, before the House approves that. And we've done
9 that in the past.

10 But, you know, I want to speak to what I
11 think is often missed sort of in the story about
12 when or how we're going to do public comment this
13 time around. And that is, the way that we're doing
14 this, the way this committee, as well as the Senate
15 committee, has decided to do this process is simply
16 unprecedented.

17 The folks on this committee could decide as
18 a committee that we're not going to do this out in
19 the open. The law would allow committee members, we
20 could just simply have somebody draw these maps
21 behind closed doors, as has been done in the past.
22 The law would allow the use of election data to be
23 used in these maps, and there's no binding
24 precedent, whatsoever, that prevents this committee
25 from using election data in drawing those maps and

1 preventing the committee from doing it behind closed
2 doors.

3 We are voluntarily saying we don't think
4 that's the best way to do this. We think the best
5 way to do this is in this committee room, with these
6 screens, the technology to allow members of the
7 public to watch what's going on, to listen to what
8 we're saying as we're drawing these maps, to
9 literally, in real time, watch us draw these maps.
10 That has never been done before in a voluntary
11 manner.

12 In 2019, you were here, Representative
13 Richardson, and many members of this committee were
14 here, we did that in some fashion because we were
15 court ordered to. Gentleman's a lawyer, I think
16 he'll agree, there's no binding precedent from that
17 decision, and this committee would be free to go
18 right back to having some consultant draw these
19 behind closed doors, put them on the floor here, and
20 vote on them. But we're choosing not to do that.

21 We're taking the unprecedented step of
22 being as transparent as I believe we possibly can
23 with the way that we're doing this committee
24 process. Obviously, you know, things can always be
25 done better. We want to do that, if we can. But

1 the unprecedented amount of transparency should not
2 be lost, not only on the members of this committee,
3 but the members of the public, as they watch us do
4 our business.

5 REPRESENTATIVE RICHARDSON: Thank you.

6 VICE CHAIR SAINÉ: Thank you.

7 Representative Harrison.

8 REPRESENTATIVE HARRISON: Thank you,
9 Mr. Chair.

10 Thank you, Chair Hall. Looking at --
11 looking at Doctors Carter, Mattingly, et al.'s
12 article -- and Erika Churchill mentioned this --
13 they say they want -- that's the one part of the
14 Stephenson v. Bartlett decision this analysis does
15 not reflect its compliance with is the Voting Rights
16 Act.

17 So I sort of skimmed Stephenson v.
18 Bartlett, in anticipation of this meeting, and I'm
19 just wondering, because that seems a very important
20 point of the Stephenson decision is compliance with
21 the Voting Rights Act. So how -- so we're starting
22 with maps that don't take that into account at all,
23 and I'm just wondering how we're complying with
24 that?

25 CHAIRMAN HALL: Thank you for the question,

1 Representative Harrison. As the lady knows, this
2 committee has made a decision to not use race at all
3 in the drawing of our maps. I'll also note that, as
4 you know, there's been a lot of litigation in this
5 state over the redistricting process in general.
6 We've had many, many lawsuits going back to when
7 Democrats were in the majority and since Republicans
8 have been the majority. It's really been no
9 different. We've had many, many lawsuits.

10 What we've seen in those lawsuits, at least
11 in the last few lawsuits that we've seen, is the
12 plaintiffs in those suits that were trying to set
13 aside those maps have said that there is no legally
14 significant racially polarized voting in North
15 Carolina. That's the plaintiffs and their own
16 experts who are saying that.

17 We've drawn maps in both 2017 and 2019, not
18 using racial data at all. And those maps have been
19 approved -- groupings, rather -- the lady's question
20 is specifically as to groupings, and I'm sort of
21 answering the grouping and map question in one. But
22 we've used groupings in 2017 and in 2019, not taking
23 into account any sort of racial data at all. And
24 courts have uniformly upheld those groupings that
25 we've used, without using racial data.

1 So we are going to stick with the criteria
2 of the committee and not consider any racial data at
3 all. And based on the past precedent of doing this,
4 we're confident that that will comply with the
5 Voting Rights Act.

6 REPRESENTATIVE HARRISON: Follow up?

7 VICE CHAIR SAINÉ: You're recognized.

8 REPRESENTATIVE HARRISON: I appreciate that
9 very thoughtful answer. I actually meant with
10 regard actually to the whole mapping process, so you
11 anticipated my question. But I'm looking at section
12 two, that provides to states that "political
13 subdivisions can't impose any voting qualification
14 or prerequisite that impairs or dilutes, on account
15 of race or color, a citizen's opportunity to
16 participate in the political process to elect the
17 representative of his or her choice."

18 So how do we know -- if we don't take into
19 account race, how do we know that we're complying
20 with the Voting Rights Act? And I kind of
21 understood you to say that we're relying on past,
22 but I'm just -- can you respond to that, please?

23 CHAIRMAN HALL: And that's the way -- the
24 way we know is because we've already done it. We've
25 done it before and courts have upheld the drawings

1 of these maps, the groupings and the districts
2 themselves, without this committee using any racial
3 data at all. We've done that twice now, so I'm
4 confident that, without using racial data, we will
5 comply with the Voting Rights Act.

6 REPRESENTATIVE HARRISON: One more follow-
7 up, I think.

8 VICE CHAIR SAINÉ: You're recognized for
9 follow-up.

10 REPRESENTATIVE HARRISON: Thank you.

11 And I guess a lot of my questions have to
12 do with compliance with the Voting Rights Act, and I
13 think I understand your answer is going to be the
14 same, so I'll move to the Common Cause decision that
15 you referenced earlier. And I appreciate the
16 committee's commitment to transparency.

17 You did say it's an non-binding precedent,
18 so you all don't anticipate -- do you anticipate
19 using any of the ruling from the holding from that
20 decision to guide this process? Do you all feel
21 bound by any of that decision in terms of following
22 the process that the court ordered?

23 CHAIRMAN HALL: From a strictly legal
24 stance, it's not a binding precedent that anyone is
25 required to follow. But as the lady knows, based on

1 the criteria the committee has adopted, that is
2 something that this committee has to follow. And
3 we've taken a lot of language out of that opinion
4 and put it into this committee's criteria.

5 The computers that you see here and the
6 online audio and video, none of that is binding. We
7 are voluntarily doing that. You know, frankly, we
8 learned from that case that perhaps a better process
9 is one that is just like we're doing -- like we did
10 then, like we're doing now, as an open and
11 transparent process. So, you know, while it may not
12 be binding, the committee has chosen to impose upon
13 itself some of the principle outlined in the Common
14 Cause case.

15 REPRESENTATIVE HARRISON: I think I'm going
16 stop for now and let somebody else ask questions. I
17 might have more. Thank you.

18 VICE CHAIR SAINTE: Thank you,
19 Representative Harrison.

20 I have Representative Cooper-Suggs and then
21 Representative Hawkins.

22 Representative Cooper-Suggs, you're
23 recognized.

24 REPRESENTATIVE COOPER-SUGGS: Thank you so
25 much, Mr. Chair, and Representative Hall. Thank you

1 so much.

2 My question was -- it goes back to the
3 public's input and that the keen interest that
4 they've had in this process, and we've seen that,
5 you know, as I stated earlier, through the
6 districting process as well as through the online
7 portals too. Over 3000 people have responded, so we
8 know that there's interest out there.

9 And so my question deals with, what steps
10 are you proposing to assure that the public be
11 involved in the efforts to create maps that
12 represent them?

13 CHAIRMAN HALL: Thank you, Representative
14 Cooper-Suggs, for the question. So I'll go back to
15 what I said previously in response to, you know,
16 what efforts are we making to make sure those folks
17 can follow this process to make sure that it's doing
18 whatever they feel like it should do. Because some
19 of members of the public feel one way about what
20 this process should ultimately end up with, and
21 others feel in different ways. They're differing
22 opinions.

23 Again, I think it's important to understand
24 context of what's happened in the past, in this
25 building, for the past 200 years when this body has

1 drawn maps. What has happened in the past is some
2 outside entity, a consultant, goes and they draw the
3 map behind closed doors. We would come into this
4 committee, just like we're in right now, and throw a
5 map down in front of the committee members and say,
6 "Here's the map that we propose."

7 We're not doing that this time. What we're
8 going to do this time is a more open and
9 deliberative process for this committee. We will
10 literally be drawing on the stations that you see,
11 so members of the public across the state and, in
12 fact, across the world, can log onto the website and
13 watch these maps as we draw them in live fashion.

14 And then, we've seen that the public
15 comment portal is actually much more popular than
16 the in-person public comment method, for one reason
17 or the other. We get many more comments through
18 that portal. We get many more emails, as members of
19 this committee can attest. You receive emails all
20 the time from folks and, you know, probably messages
21 in many different ways and phone calls.

22 So the public has favored that online
23 portal in telling us how they want to see this done.
24 That portal is going to stay open throughout this
25 process, so an individual sitting anywhere in our

1 state, and again, anywhere in the world, can sit and
2 watch what's happening. Can literally send a
3 comment right then, simultaneous with that drawing
4 going on and say, "I'm watching station four. I
5 don't like what I see in X district," or "I do like
6 what I see in X district."

7 That's going to be time-stamped. The
8 committee members are going to have a chance to read
9 every one of those. And so, there is ample
10 opportunity for members of the public to weigh in on
11 these maps. Again, in the past, there's been little
12 opportunity because the maps are already drawn.
13 Folks can come in here and talk all they want, but
14 the map has been drawn.

15 That's not the case here. We had public
16 comment ahead of time. We're going to draw these in
17 public. And I do anticipate at least some in-person
18 public comment moving forward. With all of that
19 said, I do anticipate at least some form of in-
20 person public comment at the end of this.

21 REPRESENTATIVE COOPER-SUGGS: Follow-up
22 question.

23 VICE CHAIR SAINÉ: You're recognized for a
24 follow-up.

25 REPRESENTATIVE COOPER-SUGGS: I just want

1 to make sure I fully understand this. So how are we
2 going to use the comments -- the public comments
3 when drawing these maps? Their actual comments, how
4 are we going to use those?

5 CHAIRMAN HALL: So that's up to each member
6 of this committee to decide what they want to
7 discern from a given comment. We know that if you
8 read all of these comments, there are some of them
9 that you can't do what both of them say. So you can
10 pick out two messages, and one person wants you to
11 do one thing; and the other person wants you to do
12 something else. So what do you do? Well, that's
13 the decision for each member of this committee to
14 make, what they want to do in response to that
15 public comment. What I can tell you this committee
16 has done in response to that is to ensure that we
17 have the most transparent process in the history of
18 this state.

19 REPRESENTATIVE COOPER-SUGGS: Thank you so
20 much.

21 VICE CHAIR SAINÉ: Thank you.

22 Representative Hawkins.

23 REPRESENTATIVE HAWKINS: Thank you,
24 Mr. Chairman.

25 Thank you, Chairman Hall. I really

1 appreciate you taking the time, and not only to sort
2 of travel across the state for these public
3 hearings, but to take these questions.

4 And so, one of the things that you
5 mentioned that I want to follow up on is you said,
6 "throughout this process." Meaning that the public
7 comment portal will be opening throughout this --
8 can you define what that is? Because I know I've
9 actually received that question on our start and
10 ending time, so that people know how to engage it
11 fully, and sort of when their last time is to do so.

12 CHAIRMAN HALL: I anticipate that public
13 comment portal being open until at least the time
14 that this body adopts -- meaning the House and the
15 Senate, the General Assembly, at least until the
16 time the General Assembly adopts state House maps,
17 state Senate maps, and congressional maps. That
18 public comment portal will stay open until at least
19 that time.

20 REPRESENTATIVE HAWKINS: Follow-up.

21 VICE CHAIR SAINÉ: You're recognized for a
22 follow-up.

23 REPRESENTATIVE HAWKINS: Thank you,
24 Mr. Chairman.

25 So a follow-up question is around I think,

1 you know, earlier, yourself or Erika Churchill
2 mentioned hearings. And so, of course that's
3 probably the most popular question is if we're going
4 to have hearings after this. And you said that that
5 would be up to this body.

6 Can you give us a time line in the way you
7 see this and when we would kind of make that
8 decision? And when you think that this body should,
9 you know, between now and when we actually have to
10 file, when we need to do that? Because I think,
11 again, a lot of folks would want to know if we're
12 going to sort of go back out on the road and talk
13 about these again.

14 CHAIRMAN HALL: You know, I'll answer that
15 by saying, you know, as the gentleman knows, we're
16 on an extremely truncated time line, and that's
17 nobody's fault in this body, on either side of the
18 aisle. We just simply didn't get the data in time
19 to do this in the way that it's been done in the
20 past. And especially when you couple it with the
21 fact that the maps aren't being drawn by a
22 consultant somewhere and being delivered here, and
23 us going and voting on them. We're going to do
24 that.

25 We're going to take the time to draw these

1 in this committee, out in the open, and that takes
2 time. As the gentleman knows, you know, we've drawn
3 these maps together in years past. We haven't done
4 it this year, for everybody listening at home. He
5 and I, in the past, we've worked together on drawing
6 maps in prior sessions.

7 So it's difficult to say and commit to some
8 form of public comment afterwards because the
9 reality is we've got to get these done in time for
10 the state board of elections to get ballots
11 finalized. I don't know, frankly, how long it's
12 going to take us to draw these maps. I expect to
13 hopefully start to get some gauge as we get in this
14 thing tomorrow, but for all I know, you know, it may
15 be the last week of October and we're still in this
16 room trying to finalize one version of these maps.

17 And they really need to all be done in the
18 sense that we need to have some final map in place
19 before that public comment comes in, so that they
20 can comment on whatever it is that we're
21 considering.

22 Again, I will say that I do anticipate at
23 least some form of in-person public comment. I just
24 don't know the method, where it will be at, and how
25 much it will be, because of our truncated time line.

1 But I will just again say, the online version has
2 been extremely popular. We've had a lot more
3 comments there than we've had at some of the in-
4 person sites, where we didn't have a ton of people
5 show up. Some sites, we did have a lot, and others,
6 not so much.

7 So, you know, folks across the state still
8 have the ability to directly communicate with us and
9 they've got the chance to watch this happen live.
10 So, you know, I am satisfied that the public's got
11 ample opportunity to weigh in on what we're doing
12 in.

13 REPRESENTATIVE HAWKINS: Thank you.

14 One last follow-up, Mr. Chairman.

15 REPRESENTATIVE SAINE: You're recognized
16 for a follow-up.

17 REPRESENTATIVE HAWKINS: Again, to be
18 clear, in 2019, when we worked on this project
19 together on behalf of the citizens of North
20 Carolina, we both had -- and everyone did -- had a
21 keen interest in groupings because we understand
22 that the way that counties are grouped directly
23 relates to how districts are potentially drawn.

24 And so one thing that came up last time,
25 but I think we can sort of potentially get ahead of

1 it this time, is how, you know -- how the committee
2 will approve the entire map. Or is it possible for
3 us to go and approve grouping by grouping, once we
4 go through this process?

5 Because I think, again, if you remember, a
6 division of the vote in the 2019 session, that would
7 have given us the ability to isolate and really draw
8 down on each individual grouping, which I think
9 could be really helpful. But I wanted to see what
10 the chairman thought about that ability for us to do
11 that this go round, sort of understanding how we did
12 operate in 2019.

13 CHAIRMAN HALL: You know, I anticipate, as
14 I said earlier, taking up member's amendments that
15 they have, in whatever format that they want to put
16 forth, whether that be an entirely new map or a
17 specific grouping, with the only caveat of saying we
18 can't take up -- every member of this committee
19 can't up with 50 or 100 amendments and us possibly
20 have time to get this done.

21 So assuming that doesn't take place --
22 which it hasn't in the past, and so I don't
23 anticipate that being the case this time around -- I
24 think it will be similar to what we saw last time,
25 and that is, you know, members can put the amendment

1 in whatever form they really saw fit.

2 REPRESENTATIVE HAWKINS: I keep saying one
3 last follow-up, Mr. Chairman.

4 VICE CHAIR SAINÉ: Well we'll give you one
5 last follow-up.

6 REPRESENTATIVE HAWKINS: And so, you know,
7 I, like you, native North Carolinian, and my
8 birthday is in May, so I was always used to having a
9 May primary. And I understood, you know, why we
10 moved it to March, to play in the presidential. But
11 this is a mid-term, and so, is there any appetite,
12 potentially, to move the primary back to May, in the
13 mid-term, versus the way we do it in presidential
14 years? To give us the ample amount of time to work
15 on these maps and have the potential public comment
16 and have the fun that we did last go round on this
17 project.

18 CHAIRMAN HALL: You know, I'll answer that
19 question by saying you know, I haven't seen that
20 appetite from the body. You know, I chair
21 redistricting and rules and I will leave it at that.
22 You know, I don't anticipate us moving that deadline
23 back, I think for a number of reasons.

24 But one of the best reasons, I think, is
25 folks have planned for that for some time now, and I

1 certainly understand the gentleman's argument that
2 perhaps it gives us more time to get it done. But
3 on the same token, you've got folks who have been
4 running for maybe statewide offices, and you've got
5 folks who have planned to run at given times, and
6 so, at this point in the game, I anticipate keeping
7 our filing deadlines as is.

8 REPRESENTATIVE HAWKINS: Sure. Well I
9 would just argue, Mr. Chairman, that it gives those
10 people -- North Carolina has ten and a half million
11 people, and it's a pretty big state, so that would
12 give those statewide folks a lot of time to know the
13 people of North Carolina. But I really appreciate
14 your time, Mr. Chairman. And thank you for the
15 ability to ask questions.

16 CHAIRMAN HALL: Thank you, sir.

17 VICE CHAIR SAINÉ: Thank you.

18 Any other questions?

19 Representative Harrison, and then
20 Representative Carney.

21 REPRESENTATIVE HARRISON: Thank you, Mr.
22 Chair.

23 And Chair Hall, when you were talking about
24 us being bound by the criteria of not using race or
25 partisan data, so any individual can -- any member

1 of the House can draw a district, will they be bound
2 by the same criteria?

3 CHAIRMAN HALL: Yes. So to be clear, only
4 a map that's drawn in this room is going to be
5 considered by this committee. And on these
6 computers in this room, you essentially are bound by
7 that criteria because there is no racial data or
8 election data that's loaded into these computers.

9 But to answer your question, yes.
10 Everybody will be bound by the same criteria. It's
11 not that a member that's not on the committee can go
12 draw whatever map they want to and sort of get
13 around our rules because they're not on the
14 committee. They must follow the criteria.

15 REPRESENTATIVE HARRISON: For a follow-up?

16 VICE CHAIR SAINÉ: You're recognized for
17 follow-up.

18 REPRESENTATIVE HARRISON: But it seems
19 like if you come in, and you might have the material
20 with you, it might not be actually loaded in the
21 software, but you might actually have -- I just
22 didn't know if there was some way to enforce that,
23 or how do you plan to do that?

24 CHAIRMAN HALL: Well, you know, I don't
25 plan to search every member who comes into this

1 committee room, nor do I want to do that. I don't
2 want to know what some of you all have in there.
3 But, you know, it's one of those things where, at
4 the end of the day, the members of this committee
5 are elected representatives. You're elected by your
6 constituents to come up here and do a job. And, you
7 know, I'm not going to -- I always try not to
8 question people's motives when they do something,
9 and I think this falls in that same vein.

10 So, you know, members can -- are free to
11 handle those issues as they see fit, but they will
12 follow the criteria in the sense that that data is
13 not in these computers. But I'm not going to -- I'm
14 not going to search their bags when they walk in.

15 VICE CHAIR SAINÉ: Recognized for a follow-
16 up.

17 REPRESENTATIVE HARRISON: Thank you.
18 Appreciate that.

19 And I think in 2019 we had a portal open
20 for the public to draw maps. Are we planning on
21 doing that this time around?

22 CHAIRMAN HALL: We are.

23 And if the chair will recognize
24 Ms. Churchill to speak to that.

25 MS. CHURCHILL: Yes, ma'am. Representative

1 Harrison, there will be two public terminals
2 available for use starting tomorrow morning at 9:00
3 a.m. The public will be asked to schedule in
4 advance, so that they can assure that a terminal is
5 there during the time that they want to use it.
6 They will be asked to bring a thumb drive, or other
7 device where they can save their work, because the
8 terminal will be reduced back to its original state
9 when they leave.

10 REPRESENTATIVE HARRISON: I appreciate
11 that.

12 I think I have two more questions, and
13 they're quick, hopefully. I don't want to belabor
14 the point, but in the last meeting we had on August
15 18th, several of us had gotten together and
16 advocates had proposed a public participation
17 process and a transparency process.

18 We also all received a letter from Caroline
19 Fry, on Friday, that came from a large group of
20 advocates asking for procedures to be followed by
21 this committee. One of those is transparency
22 related to third-party participation, disclosure of
23 that. Is there any plan to the extent that folks
24 are consulting with counsel or data people, or -- is
25 there any plan for disclosure of that sort of issue?

1 CHAIRMAN HALL: You know, in the same vein
2 of -- as chair of this committee, I'm not going to
3 make it a practice to search people's folders or
4 their bags when they come into this room. I'm also
5 not going to inquire into everybody that they're
6 talking to one way or the other. Again, we're all
7 elected here. You've got a duty to your
8 constituents, and you've got the decision to make as
9 to how you want to carry out that duty. But I, as
10 the chair of this committee, I'm not going to police
11 who folks are talking to.

12 REPRESENTATIVE HARRISON: I appreciate
13 that. And just last follow-up. I don't think I was
14 asking about policing, but just disclosure. And I
15 think that was what the public was asking for.
16 Thank you.

17 VICE CHAIR SAINE: Thank you.

18 I've got Representative Carney and then
19 Representative Hawkins.

20 Representative Carney.

21 REPRESENTATIVE CARNEY: Thank you,
22 Mr. Chairman, and Representative Saine.

23 And Mr. Chairman, thank you for taking all
24 of our questions this afternoon. I want to go back
25 to the drawing of these maps in this room. And I

1 guess I am one that envisioned, at first, that this
2 committee would come in here for two weeks, gathered
3 around the maps, work together in a non-partisan way
4 to draw these maps out in the public, as you've
5 stated. But I'm hearing now, and I'm understanding,
6 member -- when you said any member can come in here
7 from 9:00 to 5:00 Monday through Friday for two
8 weeks -- correct me if I'm wrong.

9 CHAIRMAN HALL: That's right.

10 REPRESENTATIVE CARNEY: But any member of
11 the legislature. House members in here, and I guess
12 the Senate will be doing the same. So it is going
13 to be beyond -- the map drawing will go beyond just
14 the committee members; is that correct?

15 CHAIRMAN HALL: Yes. And one thing I do
16 what to correct that you said. You said Monday
17 through Friday for two weeks. I don't know if it's
18 going to be two weeks or not. I don't know how long
19 it's going to take. But -- and I understand why the
20 lady is asking the question.

21 And, you know, having done this in a
22 similar fashion in 2019, what ends up happening when
23 you leave this committee room open for that long, it
24 gives members an opportunity to come in and draw as
25 they see fit. Just as you and I have the right as

1 House members to draft -- to have drafted whatever
2 bill we want to have drafted.

3 The reason that we're doing it that way is,
4 you know, we wouldn't tell members, prior to the
5 filing or bill drafting deadline, we wouldn't say,
6 you know, only certain members can file bills. You
7 know, sometimes that may be preferable for our given
8 caucuses, but unfortunately, maybe unconstitutional.

9 So, in the same vein, I want to give every
10 member of the House an opportunity to be able to
11 draft their bill, so to speak, if they want to do
12 that. But you also see happening, especially sort
13 of in peak hours, so to speak -- so, you know, in
14 the mornings I would anticipate on like Tuesday,
15 Wednesday, Thursday, you're going to have several
16 people in here. And Representative Hawkins and I
17 have done this in the past. Some of those parts of
18 the maps that we're under right now, he and I
19 literally drew together in this committee room. I
20 mean, substantial parts of them. We didn't have to
21 agree on every single thing, but substantial parts
22 of them, you know, we sat down and drew them
23 together.

24 So some of that will happen. You know,
25 members may ask members from given districts to come

1 over and say, "Hey, what do you think about, you
2 know, this given area? You know it better than I
3 do." So that's going to be allowed, I mean, that
4 teamwork, so to speak. But the reason for leaving
5 it open so much is just to give members the
6 opportunity to have their voice heard, so to speak,
7 in this committee room.

8 REPRESENTATIVE CARNEY: So a follow-up?

9 VICE CHAIR SAINÉ: You're recognized.

10 REPRESENTATIVE CARNEY: If there are 120
11 members out of 120 -- let's say every member decided
12 to come in and put something in to these maps, a
13 little section, or their own, or whatever, their own
14 districts, how do we pull all of that together? And
15 I know staff will be the ones that will pull that so
16 that it meets all of the criteria, and pass all the
17 must, or whatever. Will we come up with one map, or
18 two, or three maps that then the committee would
19 vote on? I'm just asking.

20 CHAIRMAN HALL: I think we'll have multiple
21 maps that the committee will vote on. You know,
22 just like with any other committee, if you're not a
23 member of this committee, if you want to draw a map,
24 you're going to need to get a member of this
25 committee to present that for you. Just like on any

Page 59

1 other committee, if you've got a bill that, if you
2 can't be in a given committee, or you're not on it,
3 you just want somebody on it to present, they need
4 to present it for you.

5 That's probably -- and actually, now that I
6 say that, it depends on the timing. Let me actually
7 take that back. Because if we have time, you know,
8 to let other members come in and speak to that, just
9 like we would other committees, we'll do that. But
10 I do anticipate that sort of creating a time crunch
11 for us. And so most likely what we're going to do
12 is limit it to the members of this committee
13 presenting amendments and presenting their various
14 maps.

15 REPRESENTATIVE CARNEY: And one final. How
16 will this be -- how will we let the other members
17 know -- and of the course the public that is
18 listening -- how will we let them know about this
19 process? Is there going to be an email sent out to
20 everyone that they will understand what we're doing?

21 CHAIRMAN HALL: We will probably send
22 something out just to say, you know, if you want to
23 come in and draw, that you can. But I think that,
24 you know, the rules are fairly simple. Once you get
25 in here you see, you know, you can go to the station

1 and draw as you see fit. But we will make it known
2 that all House members have the ability to come in
3 here and draw maps during the committee period.

4 REPRESENTATIVE CARNEY: Thank you.

5 REPRESENTATIVE SAINÉ: Thank you.

6 Representative Hawkins.

7 REPRESENTATIVE HAWKINS: Yes, sir. Thank
8 you, so much, for the second opportunity to ask
9 questions about redistricting. The first question
10 is around the ability for multiple language speakers
11 to use this portal and have their languages
12 translated properly.

13 Representative Torbett and I were in
14 Durham, and he was so kind to allow for a
15 translator, a Spanish speaking translator, for our
16 Spanish speaking population to take part. And maybe
17 this is a question for staff, since we potentially
18 may not have in-person public hearings in the
19 future, how are multiple languages being transferred
20 into the English language, so that we can decipher
21 it and make sure that they have a part in the
22 process?

23 VICE CHAIR SAINÉ: Ms. Churchill.

24 MS. CHURCHILL: Representative Hawkins, I'm
25 not going to commit to anything, because I'm not

Page 61

1 sure what we can do with the technology, but we are
2 absolutely happy to look into what our options are,
3 and report that back to the chair.

4 REPRESENTATIVE HAWKINS: Okay. I also
5 heard you were Erika Churchill, and you can do all
6 things, but just putting that out there.

7 MS. CHURCHILL: Speaking French is not one
8 of those things.

9 REPRESENTATIVE HAWKINS: Okay. 10-4. Just
10 --

11 CHAIRMAN HALL: I believe she said not yet.

12 REPRESENTATIVE HAWKINS: Follow up,
13 Mr. Chairman.

14 VICE CHAIR SAINÉ: You're recognized for a
15 follow-up.

16 REPRESENTATIVE HAWKINS: And this is just,
17 you know, full transparency, Mr. Chairman, so that
18 the public can know that we're, you know, working
19 with all cards up. Is there, you know, any -- I
20 want to make sure that there have been no maps drawn
21 outside of this building that any of us have been
22 privy to. Can we say that unequivocally that that's
23 been the case?

24 CHAIRMAN HALL: I can't speak for other
25 members of this committee. What I'll say is that I

1 have not contributed to the drawing of any map, at
2 all.

3 REPRESENTATIVE HAWKINS: Awesome. Thank
4 you, Mr. Chair.

5 VICE CHAIR SAINÉ: Thank you.
6 Representative Warren.

7 REPRESENTATIVE WARREN: Thank you. I
8 propose this to the Chair, but probably going to
9 deflect it to Ms. Churchill. Can you explain what
10 the matrix is on page 2 of this stack of maps?

11 VICE CHAIR SAINÉ: Ms. Churchill.

12 REPRESENTATIVE WARREN: I knew it. She can
13 do anything.

14 CHAIRMAN HALL: When we're using the word
15 "matrix," generally I'm going to go ahead and
16 deflect that one on over.

17 MS. CHURCHILL: So, Representative Warren,
18 I'm not sure that it is a matrix in the form that
19 many people think of when you say that word. But it
20 was our attempt to keep up with how the group from
21 Duke was allocating the options to create the eight
22 different combinations for a fully assigned
23 statewide map.

24 So when you see the A1 option in the Duke
25 House 01 through 04, that is associated with the

1 western part of the state, that northwestern corner
2 that was unassigned in the fixed map. The option
3 one, the combination is Surry, Wilkes, Alexander,
4 for two members. And Alleghany, Ashe, Watauga, and
5 Caldwell for two members. And so it's just, we
6 wanted you all to know that we were trying to
7 methodical and systematic, following the recipe. So
8 it's just simply the designations they were using to
9 tell us whether to add salt or to add sugar.

10 VICE CHAIR SAINÉ: Thank you, sir.

11 Any other questions for Chairman Hall?

12 Representative Brockman.

13 Representative Brockman, Representative
14 Reives, and then Representative Harrison.

15 REPRESENTATIVE BROCKMAN: I know we're not
16 considering race, but are we considering party
17 registration when we're drawing the maps, as
18 criteria?

19 CHAIRMAN HALL: Nope.

20 VICE CHAIR SAINÉ: Representative Reives.

21 REPRESENTATIVE REIVES: Thank you, Mr.

22 Chair. I had a -- I wouldn't call them a series,
23 but you may call them a series of questions --

24 VICE CHAIR SAINÉ: You're recognized for a
25 series, sir.

1 REPRESENTATIVE REIVES: All right. Thank
2 you.

3 I wanted to make sure, and I apologize if
4 this is repeating anything, I don't know that I have
5 the answer in my head, and I know that when we walk
6 out of this room, that I'm going to get all these
7 questions, so I'm trying to kind of figure out where
8 we are.

9 So on the drawing of the maps, I think my
10 big question is -- and I've got to get my glasses
11 back on because I had to type this because I can't
12 see, and I can't read anymore. See what you guys
13 did to me in 10 months. I had 2020 vision when I
14 got here.

15 But I guess first following up on
16 Representative Hawkins' question, and again, it's
17 just the question we've got to ask. He asked if
18 there have been any maps drawn outside this
19 building. I would like to know if there have been
20 any maps drawn inside the building?

21 CHAIRMAN HALL: No. Great lawyer question.
22 But no.

23 REPRESENTATIVE REIVES: Just making sure.
24 I got to ask.

25 CHAIRMAN HALL: You know, again, I'm

1 speaking for myself, as the gentleman understands.
2 I can't speak for what other members have done, on
3 either side of the aisle, or in the Senate, but I
4 have not participated inside or outside of the
5 drawing of any maps, for this session.

6 REPRESENTATIVE REIVES: That's good. I
7 appreciate that. And going on that same issue, and
8 you really, you and I have talked, and now I want to
9 say publicly, you have been very good about keeping
10 me up to date with what we're trying to do, how
11 we're trying to do it, and I appreciate that. And
12 we had this discussions, but I want to kind of get
13 it clearer now.

14 So my concern is similar to Representative
15 Harrison's concern because here seems to be the
16 problem that you run into. So let's say somebody --
17 and I'll use somebody who would never do this. I'm
18 going to use Representative Bell. So let's say
19 Representative Bell comes in and he's gone, and he's
20 talked to, you know, non-member Billy Richardson,
21 and Billy has said, "Oh, man. This would be a great
22 map for you, John Bell, because, you know, you put
23 all the democrats over here. You put all the
24 republicans here. And then you got you all the
25 black people here and the white people here, and all

1 that stuff." Obviously using racial and partisan
2 data that we're not using.

3 And so then he says, "Here's my map, so you
4 don't have to worry about drawing it." Well if
5 Representative Bell, under what I'm hearing, brings
6 that map in, sits it down in front of him at the
7 terminal, and just draws it on a computer, then he,
8 at that time, has been allowed to draw a map that's
9 been drawn on a computer, so it can be used, but
10 it's still using racial and partisan data.

11 And I'm just like Representative Harrison,
12 I'm definitely not asking anybody to police anyone,
13 but do we have anything in place that would kind of
14 help prevent that? Because to me, that sounds an
15 easy get around, in a legal sense, around the
16 criteria that we've set up.

17 CHAIRMAN HALL: Well, you know, I would
18 initially say that the problem that you face at the
19 end of the day, as the gentleman already knows, and
20 as I've said, I don't think I have the ability to
21 police members of this committee, nor do I want to
22 try to do that. I don't think it can effectively be
23 done.

24 The committees of this -- the members of
25 this committee have an elective duty to do things, I

1 think in the right way. And we have a set of
2 criteria that we have used in here. I know I'm not
3 going to bring in a map and sit down and draw it,
4 but you know, the reality is, we're elected
5 officials, and people will talk to us, and they call
6 us all the time. And throughout this process, many
7 members of the committee and the body are going to
8 be told by folks, whether in their district or in
9 the halls out here, what they think they should do.

10 And in fact, as many of the questions today
11 have shown us, the members of this committee really
12 want the public's comment. And, you know, those
13 members of the public may say, "Representative
14 Reives, I want you to draw the district this way and
15 I want you to do this precinct." And that's up to
16 you to determine how you want to handle doing that.

17 But at the end of the day, I think we've
18 done all that we can, in the sense of we're only
19 putting the data that's allowed to be used in the
20 computers, in this room, and we've got a live audio
21 feed, and a live video feed. I'm not sure that we
22 can do a whole lot else, humanly, to prevent any
23 sort of noise, so to speak, from coming in, other
24 than doing those things.

25 REPRESENTATIVE REIVES: Is it possible,

1 just as a follow-up, that we could at least prevent
2 the bringing in of a physical map to draw from? Is
3 that something possible?

4 CHAIRMAN HALL: Yeah. You know, and you
5 and I talked about this the other day, and I thought
6 it was a great question, something I hadn't really
7 thought about. And, you know, and I certainly, I
8 see your point. But what I don't want to get into,
9 as the chair of this committee, is when, you know,
10 Representative Warren comes in here and he's got
11 this big spread, me, you know, telling the sergeant
12 in arms to take Representative Warren, you know --
13 or take his map away from him or take him out of
14 this committee room. You know, I want to avoid
15 that.

16 And, you know, it's one of those things
17 that there might be a scenario where, you know, you
18 draw one map in here -- you've been through this
19 before -- you draw a map, you have it printed out,
20 and you might take it with you to study it and think
21 about it, and to determine what you want to do to
22 perhaps change it. Maybe you want to take it to
23 your constituents and say, "Look, here's what I'm
24 thinking. What do you think about this?" And maybe
25 they give you input.

1 And you might want to bring that very map
2 back in here, that you drew in this committee, and
3 sit down and, based on the changes -- the input,
4 rather -- the input you've got from other folks, and
5 make those changes. And I don't know how we would -
6 - again, I go back to the word policing it -- how I
7 -- I can't stand over somebody's shoulder and say,
8 "Now that's not the map you drew in here. That's a
9 map -- I don't know where that came from." I just
10 don't -- I don't think it's possible to do that.

11 But what I can tell the members of this
12 committee, as the chair, I won't be brining any maps
13 in here to draw off of. But I want to be clear that
14 when members of the public that are watching these
15 live video feeds, or members who are sitting in the
16 back, they're going to see members of this committee
17 walking around with maps in their hands. Some
18 people like to have a sheet of paper in front of
19 them. You know, you're probably like me. I like to
20 read, you know, a statue printed out, rather than
21 read it on a computer screen, so that I can write on
22 it, and think about it a little easier.

23 So, because of that, I'm afraid, you know,
24 even if we tried to do that, the optics of removing
25 members from this committee, and people seeing

1 people walking around with maps that have been
2 printed out because they were drawn in here, I think
3 it ultimately results in the best path forward to
4 just say, you know, look folks, the map you draw has
5 got to be the one that you do in here and nowhere
6 else. And that's up to the members and their
7 integrity as to how they want to handle that.

8 REPRESENTATIVE REIVES: And I would say
9 then, based on that, I'm assuming we will be
10 instructing members that you are not to use racial
11 or partisan data in the drawing of the maps that you
12 do in here.

13 CHAIRMAN HALL: Absolutely.

14 REPRESENTATIVE REIVES: And I would also, I
15 guess, say that once we're down to the maps that
16 we're going to be voting on, I mean, I would think
17 that's something that we can ask members when
18 they're presenting a map. You know, if a member
19 comes up and says, "This is my map we're voting on,"
20 you could say, "Okay. You didn't use racial or
21 partisan data," and that won't be considered out of
22 line.

23 CHAIRMAN HALL: I think that's, you know, a
24 fair question for any member of this committee or
25 anyone in the House to ask those very questions.

1 REPRESENTATIVE REIVES: All right. Well
2 then that gets us to the next question I've got.
3 We've got criterion that we've put in place that we
4 set up for the whole map drawing process. What my
5 question is is what criteria are we going to use to
6 choose between grouping options? Are we going to
7 have some plain set out criteria saying this is what
8 gives us the best grouping options?

9 CHAIRMAN HALL: So the committee is not
10 going to adopt any specific of the options and
11 groupings. We have said, as I said a moment ago
12 when I was chairing, the only groupings that we're
13 going to consider, are those that's in this packet.
14 But as you know, and the committee members know,
15 there are multiple possible groupings within that
16 packet. We're not going to vote on which one
17 members have to use.

18 So that's going to be up to the members of
19 this committee what combination of groupings each
20 member wants to use in drawing their maps. Within
21 that, there might be, you know, one particular
22 grouping, or set of groupings, that somehow results
23 in a map that more fairly meets the criteria, over
24 some other set of groupings. But that's -- you
25 know, in large part, some of that is subjective.

1 Not all of it, but some of it is subjective.

2 But it's going to be up to the committee
3 members to decide what set of groupings they want to
4 use. We're not going to limit the committee to any
5 one combination of groupings.

6 REPRESENTATIVE REIVES: Thank you for that.
7 And back to some of Pricey's questions on the Voting
8 Rights Act. Because I'll be the first to say, I
9 don't practice in that area, so I don't profess to
10 completely understand what we're supposed to do.

11 I think what my question would be is, what
12 do you feel like our obligations are under the
13 Voting Rights Act, at this point? Because I
14 understand that you're saying that we won't be using
15 racial data to determine what those districts look
16 like, initially, which I think was done before. So
17 what do you think our obligations would be and how
18 are we going to comply?

19 CHAIRMAN HALL: Well, obviously, you know,
20 we're obligated to comply with section two of the
21 Voting Rights Act. But as I said earlier, we've
22 seen a lot of litigation in this state, and you've
23 followed that, I've followed it. I can't say I've
24 read every line of every single case, because that's
25 all you would ever do, you know, if you were going

1 to go do that. But I've read a lot of it, and in my
2 opinion, what the plaintiffs have said -- so those
3 folks who have tried to set aside maps -- have said
4 -- and their experts, by the way. The experts that
5 they hired to go to court for them. They've all
6 said that there is no legally significant racially
7 polarized voting in North Carolina.

8 That's the evidence in the record from past
9 cases that we have. In my opinion, that's what the
10 Covington Court found. So Judge Wynne found that
11 there was no legally significant racially polarized
12 voting in North Carolina. But certainly, the
13 plaintiffs and their experts made that claim.

14 So without that, we believe, as we've done
15 in the past two sessions that we've redrawn, not
16 considering race is actually, not only proper, but
17 it's the best way forward to make sure that we are
18 complying with, not only the Voting Rights Act, but
19 other state and federal laws.

20 REPRESENTATIVE REIVES: And also, based on
21 the court decisions, I heard you earlier say that we
22 are choosing not to use partisan data, but since
23 there's no binding precedent -- was your statement
24 about that -- then what obligations do
25 you feel like we have, based on the case that talked

1 about partisan gerrymander? Do you feel like that
2 we have any obligations based on that case, or
3 that's just something we all have to talk about?

4 CHAIRMAN HALL: It's not a legally binding
5 precedent. It's not an appellant, because the
6 gentleman knows it wasn't an appellate court that
7 made any of those decisions. So to answer the
8 technical aspect of your question, it is not legally
9 binding.

10 However, we have adopted some of the
11 opinion in our criteria, so to the extent that we
12 adopted it into our criteria, that's binding on this
13 committee. We've also taken some things that we
14 didn't really adopt as criteria, but simple
15 instructions to the committee that was in that case,
16 and that is all of these computer stations that we
17 see around, the live audio, live video, we're
18 voluntarily doing that.

19 Again, not binding on us at all. There is
20 certainly no state law that requires this body to
21 have TV cameras to watch us do anything. I mean, we
22 can have -- we have to have open meetings, when the
23 body's meeting, but there's no law that requires us
24 to be transparent in this process. We are
25 voluntarily choosing, at every single step along

1 this line. We are going above and beyond what the
2 law requires us to do, in my opinion, in terms of
3 transparency.

4 REPRESENTATIVE REIVES: All right. And I
5 think I've got one follow-up that may be more
6 appropriate for staff, but if you'll just determine,
7 Mr. Chair, who is best to do it. Because while you
8 were talking, I was also thinking back on the Voting
9 Rights Act. I guess my question is, how do we know
10 we're in compliance with the Voting Rights Act with
11 a map then, if we're not using racial data during
12 this time?

13 CHAIRMAN HALL: Well, again, I would fall
14 back on what we've done in the past. And we have
15 done this in the past in the very method -- with the
16 very method that we're using right now. We haven't
17 used racial data. And those courts have upheld that
18 process. So we're essentially sticking with what
19 works.

20 As the gentleman knows, this is an
21 ever-evolving body of law around redistricting. All
22 we can do is try to stick with what we know works
23 based on past precedent. And in this particular
24 instance, we're confident, just as we've done in the
25 past, that we should not use racial data at all, and

1 that doing so, we'll be in compliance with all state
2 and federal laws.

3 REPRESENTATIVE REIVES: Okay. And I'm
4 going to repeat what I think I'm hearing, and just
5 tell me if I'm accurate. So, if I'm hearing you
6 correctly, we won't be doing anything proactively to
7 see if we're in compliance. What we'll be doing is
8 we'll draw maps, and it's our believe that those
9 maps will comply. And then if the courts tell us
10 they're not in compliance, then that would be when
11 remedial measures would be taken.

12 CHAIRMAN HALL: In my opinion, not using
13 racial data will ensure that we are in compliance
14 with those laws. So yes.

15 REPRESENTATIVE REIVES: Okay. Got it. And
16 when we get down to the point on voting on these
17 maps, I mean, are we going to do any kind of culling
18 -- I'm with you in the sense I want this to be more
19 of an efficient process, and if I'm hearing
20 correctly, what our process is, in theory, 120
21 members can walk in here and draw 120 maps, and then
22 can have 120 amendments, which could really kind of
23 have us all over the place. Is there anything that
24 we're doing to kind of cull this down so that we're
25 not voting on 120 maps when we make our committee

1 vote?

2 CHAIRMAN HALL: Well, you know, the
3 gentleman may want to address that in caucus, before
4 we vote on these maps. But outside of that, you
5 know, it's one of those things that I don't know how
6 many we're going to have. I don't want to sit here
7 and say, now look, we're not going to consider --
8 we're only going to consider 10 maps, so come up
9 with your best 10. I don't want to do that. I want
10 to give members of this body who are elected the
11 opportunity to be heard.

12 You know, on the floor, people can put
13 forth amendments all day, just like, you know, we
14 see them often do. And so we don't want to limit
15 that. But what I'll say is, you know, if we get in
16 here as a committee, and we've got a ton of these
17 amendments and proposed maps coming in, at some
18 point -- and the chair -- I will say, I will talk to
19 you about this ahead of time -- at some point, you
20 and I are going to have to get together and say, you
21 know, we're going to have to talk to the folks in
22 our respective caucuses and limit the number of maps
23 and amendments that we're putting forth in this
24 committee, and tell them, save it for the floor. If
25 you want to put it forth on the floor, they're

1 certainly welcome to do that.

2 But what I'll commit to is an interactive
3 process with you, especially, and really all the
4 members of this committee, that we try to get it
5 done in an efficient process. And that may take,
6 you know, you and I putting our heads together and
7 figuring out which amendments we should take up on
8 this committee, and which may need to wait for the
9 floor.

10 REPRESENTATIVE REIVES: All right. Well I
11 think those are my questions. Thank you.

12 VICE CHAIR SAINÉ: Thank you, sir.

13 Next, Representative Harrison.

14 REPRESENTATIVE HARRISON: Thank you, Mr.
15 Chair.

16 And Mr. Chair, I apologize for the barrage.
17 I think these are really simple questions. If I
18 heard Erika correctly, the public can draw maps on
19 public terminals that are set up, but not in this
20 room or in 544; is that accurate?

21 REPRESENTATIVE SAINÉ: Ms. Churchill.

22 MS. CHURCHILL: Yes, Representative
23 Harrison. That is accurate. The drawing stations
24 in room 544 and 643 are reserved solely for members
25 of the General Assembly.

1 REPRESENTATIVE HARRISON: So as a follow-up
2 to that, did I hear that we're only considering maps
3 that are drawn in this room and in 544? And if
4 that's the case, then what are we doing with the
5 public's maps?

6 CHAIRMAN HALL: So --
7 Mr. Chairman, sorry.

8 REPRESENTATIVE SAINÉ: Go ahead.

9 CHAIRMAN HALL: So if a member of the
10 public comes in, and as I've said earlier, just like
11 any other bill, you know, one of your constituents
12 or the member of the public may say, "Look,
13 Representative Harrison, here's what I think you
14 should do," you're obviously welcome to take a look
15 at that. And herein lies sort of the friction
16 between the position that Representative Reives
17 talked about, and what you're saying right now.

18 So if I'm to say, as the chair of this
19 committee, you cannot bring a map in here, period,
20 well, if one of your constituents says,
21 "Representative Harrison, I went to the portal
22 downstairs, I drew this map, and I really think this
23 is a good idea," and you agree with it, if we have
24 that rule in place, you wouldn't be able to bring
25 that map in this room. You wouldn't be able to take

1 into account the -- and that's literally public
2 input that you wouldn't be able to take into
3 account.

4 So the maps that we take up must be drawn
5 in this committee room. Now, we'll talk about maps
6 that are drawn, you know, downstairs, but with the
7 same data loaded into the computers, and how we'll
8 go about handling that, you know, if a member
9 literally wants to take one of those up. But what I
10 anticipate right now is requiring that it be drawn
11 in this committee room.

12 REPRESENTATIVE HARRISON: I appreciate
13 that, and I just have one question and I think I'm
14 done. I must have missed the congressional map
15 discussion. Have we talked about that? When does
16 it happen?

17 CHAIRMAN HALL: So one thing I do want to
18 clarify. So in this room, we won't be drawing any
19 state Senate maps. Just as, you know, we're not
20 going to let them screw up our state House maps, so
21 they're not going to be able to draw ours. The
22 congressional maps, so I think technically, and
23 staff can correct me if I'm wrong, I think the data
24 is in there right now to be able to draw a
25 congressional map.

1 Is that right, Ms. Churchill, just in
2 general --

3 Okay. So you could start on a
4 congressional map if you wanted to. That's up to
5 each member of this committee. I know my hope is is
6 that we sort of tackle the state House map first, as
7 a committee. So if you're drawing, just know, the
8 first map that I anticipate taking up as a chair, is
9 going to be the state House map. So you need to
10 work on that one first if you want it to be ready to
11 go to put forth whatever your amendment may be. And
12 then after that, at some point, we'll do the
13 congressional map.

14 REPRESENTATIVE HARRISON: If I could follow
15 up --

16 VICE CHAIR SAINÉ: You're recognized for a
17 follow-up.

18 REPRESENTATIVE HARRISON: And I'm sorry if
19 you said this -- so when do you think we're going to
20 be done with all these maps, in terms of us enacting
21 them?

22 CHAIRMAN HALL: Yeah. You know, I really
23 don't know when we're going to be done. What I'll
24 say is that I believe we need to be done by the end
25 of this month. We may have a few more days past

1 that, that the state board of elections can still
2 give us turnaround. But the mindset that I've had
3 is let's get this done by the end of October, that
4 way everyone gets ample time to know what districts
5 are going to look like and the state board of
6 elections can get things done.

7 But, you know, the problem is, you know, we
8 are drawing the whole map for the first time, I
9 guess since 2011. And what we've done, you know,
10 since I've been in this body -- I've been through
11 this process a number of times, but it's always
12 typically been with a more limited part of the map
13 that we're required to redraw. So that's one of the
14 issues. And that is, this is so unprecedented, we
15 have never done it this way. This body has never
16 drawn the whole map in complete public view with
17 live audio, live video. We don't know how long that
18 process is going to take. But, you know, the goal
19 is to get it done by the end of October.

20 REPRESENTATIVE SAINÉ: Representative
21 Carney.

22 REPRESENTATIVE CARNEY: Just one last
23 question, and Mr. Chairman, thank you so much for
24 your indulgence. And we're about to beat the Senate
25 on this committee meeting length of all of us being

1 able to answer questions, so I appreciate that.

2 I'm just hung up on the maps being drawn in
3 this room, and I'm trying not to be. Because on one
4 hand we're stating that the only maps we will
5 consider will be the maps that are drawn on these
6 computers, in these rooms. But now I'm hearing that
7 it doesn't preclude someone coming to me, from the
8 public, and giving me information and a map, and
9 then I come in here and transport it into the
10 portal.

11 That takes that to the level of there can
12 be maps -- and help me understand if I'm wrong --
13 there can be maps drawn outside of this building,
14 from any group, and given to a member, or a group of
15 members, and they can come in and put it into the
16 portal. It would be under their name. Is that
17 correct?

18 CHAIRMAN HALL: Well, I guess in a literal
19 sense, you certainly could hear from somebody else,
20 and come in here, and draw a map. And there's
21 really nothing we can do about that. It's a first
22 amendment issue. The members of this committee have
23 a first amendment right to go talk and hear from
24 their constituents. Their constituents have a first
25 amendment right to talk to their legislatures. Well

1 even if you're not their legislature. The folks of
2 this country have a right to say what they want to,
3 and if you're walking down the street, they can come
4 up to you and say, "Representative Carney, here's
5 what I think you should do."

6 It's then up to you, as a member of this
7 committee, to handle that in whatever way you see
8 fit. Just like you would a bill. Some individual
9 in your district, or not your district, may write
10 out a bill for you. You're not going to go
11 introduce that, obviously, and us vote on it to go
12 through the bill drafting process. So in some ways,
13 you know, it's very similar.

14 The other thing that I'll say though, I
15 think what may be getting lost in the weeds is, when
16 you actually sit down to do this, this is a big
17 state. There's a bunch of precincts on the
18 congressional maps. You have to get things -- with
19 zero deviation it's going to be very difficult to
20 sit down and memorize an entire map, and come in
21 here and sit down and pinpoint, you know, wherever
22 an outside map was that you saw.

23 But I think, fundamentally, the issue is
24 going back to the law would allow exactly what
25 you're saying, but even on another level. It would

1 allow you to go hire somebody to draw whatever map
2 you felt like was the best map, and bring it in
3 here, and put it before this committee. But we're
4 going above and beyond what the law requires, in
5 terms of transparency. We're going to require them
6 to be drawn in here.

7 REPRESENTATIVE CARNEY: Thank you.

8 REPRESENTATIVE SAINÉ: Any other questions
9 for Chairman Hall? Seeing none, I believe the
10 business of the committee is completed today.

11 Is that right, Chairman Hall?

12 CHAIRMAN HALL: That's right, Chairman
13 Sainé. And the members, we'll be back in here at 9
14 o'clock in the morning. We'll have in, and members
15 will be able to draw. And let's see how much we can
16 get done tomorrow and perhaps part of Thursday and
17 see if we need to work on Friday.

18 REPRESENTATIVE SAINÉ: You've heard the
19 gentleman. Come in tomorrow ready to work. With
20 that --

21 I'm sorry. Representative Carney.

22 REPRESENTATIVE CARNEY: So that turned into
23 one more question.

24 VICE CHAIR SAINÉ: You're recognized.

25 REPRESENTATIVE CARNEY: Does that mean that

1 the full committee, Monday through maybe Friday, if
2 we have a duration, we are to be present in here
3 every day that the maps are being drawn?

4 CHAIRMAN HALL: No. You don't have to
5 present. That's completely up to you as a committee
6 member. You can come for all of it or come for none
7 of it. But it's up to you.

8 REPRESENTATIVE CARNEY: We have a choice.
9 Thank you.

10 VICE CHAIR SAINTE: We stand adjourned.
11 Thank you.

12 (END OF AUDIO FILE)

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF TRANSCRIPTIONIST

2 I certify that the foregoing is a true and
3 accurate transcript of the digital recording
4 provided to me in this matter.

5 I do further certify that I am neither a
6 relative, nor employee, nor attorney of any of the
7 parties to this action, and that I am not
8 financially interested in the action.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Julie Thompson, CET-1036

Electronically Filed
2021-11-30 14:15:41

EXHIBIT G

Expert Report on North Carolina’s Enacted Congressional Districts

Christopher A. Cooper

November 29, 2021

Introduction

My name is Christopher A. Cooper. I have been asked to provide a brief analysis of the partisan characteristics of North Carolina’s congressional maps, enacted on November 4, 2021, for purposes of Plaintiffs’ motion for preliminary relief in *Harper v. Hall*, No. 21 CVS 500085. I am conducting this analysis as a private citizen and am not speaking for my employer, nor am I conducting this work on university time, or using university resources.

I am the Robert Lee Madison Distinguished Professor of Political Science and Public Affairs at Western Carolina University, where I have been a tenured or tenure-track professor since 2002. I hold a PhD and MA in Political Science from the University of Tennessee, Knoxville and a BA in Political Science and Sociology from Winthrop University. My academic research focuses on state politics and policy, elections, and southern politics—with particular application to North Carolina. To date, I have published over 50 academic journal articles and book chapters, co-edited one book, and co-authored one book (both with the University of North Carolina Press). I teach courses on state and local politics, political parties, campaigns, and elections, southern politics, research methods, and election administration. In 2013, I was named the North Carolina Professor of the Year by the Carnegie Foundation for the Advancement of Teaching and I have received Western Carolina University’s highest honors in teaching (Board of Governors Teaching Award) and scholarship (University Scholar).

Much of my academic and applied research relates to North Carolina politics and policy and I am a frequent source for news media seeking comments about politics in the Old North State. My quotes have appeared in national and international outlets including the New York Times, Washington Post, Politico, BBC, and the New Yorker, as well as in North Carolina-based outlets including the News and Observer, Charlotte Observer, Asheville Citizen Times, Carolina Journal, Spectrum News, and National Public Radio affiliates in Chapel Hill, Charlotte, and Asheville. I have written over 100 op-eds on North Carolina, southern and national elections and politics, including pieces in the Atlanta Journal Constitution, NBC.com, the News and Observer, Charlotte Observer, and Asheville Citizen Times, and regularly give talks about North Carolina politics, North Carolina elections, and the redistricting process to groups throughout the state. I previously served as an expert witness in *Common Cause v. Lewis*.

I am being compensated at a rate of \$300 per hour.

The bulk of the analysis that follows analyzes the consequences of the choices made district by district. Before proceeding into this analysis, however, a few points of context:

- North Carolina is, by virtually any measure, a “purple state” with healthy two-party competition. The North Carolina Governor is a Democrat, while the US Senators are Republicans. There are more registered Democrats than Republicans in the state, and in the 2020 election, the two-party vote share difference between Trump and Biden was the smallest of any state that Donald Trump won.
- North Carolina does not show as much evidence of “natural clustering” as other states. According to Stanford University political geographer Jonathan Rodden, “Due to the presence of a sprawling knowledge-economy corridor, a series of smaller automobile cities with relative low partisan gradients, and the distribution of rural African Americans, Democrats are relatively efficiently distributed in North Carolina at the scale of congressional districts.”¹ In other words, massive partisan disparities in election outcomes in favor of one party or the other cannot be discounted as simply a result of where Democrats and Republicans happen to live.
- Gerrymandering, drawing districts to benefit one party at the expense of the other, is generally accepted as a threat to democracy in North Carolina and across the nation. This statement is true regardless of partisanship. For example, a 2018 Elon Poll found that just 10% of registered voters in North Carolina believe the current redistricting system is “mostly fair.” A recent op-ed in the *News and Observer* by Republican Carter Wrenn and Democrat Gary Pearce illustrates bi-partisan agreement on the evils of gerrymandering in clear terms. They explain, “We agree that gerrymandering is a major problem that undermines the foundations of our democracy. We agree that districts shouldn’t be drawn to help one political party, no more than college basketball games should be rigged to favor one team.”² The preference for fair maps is not a partisan one.

¹ Rodden, Jonathan, *Why Cities Lose* (New York: Basic Books, 2019), 173.

² Gary Pearce and Carter Wrenn. “We’re usually on opposite sides of political battles. But we agree on NC voting maps.” *News and Observer*. October 21, 2021.

While the district-by-district analysis is key to understanding the ways in which the map will translate into advantage for one party or the other in any given district, the map is best thought of as a single organism, rather than 14 separate congressional districts---when one district moves in one direction, another district must shift in response. As a result, it is worth pausing and considering some of the general characteristics of the map before moving into a district-by-district analysis.

- North Carolina earned an additional congressional seat because of population growth that occurred mostly in urban areas: according to an analysis of U.S. census data by the News and Observer, more than 78% of North Carolina’s population growth came from the Triangle area and the Charlotte metro area.³ Despite that fact, the number of Democratic seats actually *decreases* in the current map, as compared to the last map. The last map produced 5 Democratic wins and 8 Republican wins; this map is expected to produce 3 Democratic wins, 10 Republican wins and 1 competitive seat.
- Democratic strongholds Mecklenburg, Guilford, and Wake Counties are each divided across three districts, despite the fact that there is no population-based reason to divide them this many times. In the previous map, Mecklenburg was divided into two districts, Wake into two districts, and Guilford fell completely in one district. The strategic splits in the enacted map ensure that large numbers of voters will have no chance of being represented by a member of their own party. These splits will also lead to voter confusion and fractured representational linkages. The shaded red-and-blue maps that follow this introductory section provide a graphical representation of each of these county splits.
- The map produces geographic contortions that combine counties in ways that, in some circumstances, have never existed before.
- The double-bunking that occurs in the enacted map advantages the Republican Party. A Republican (Virginia Foxx) and a Democrat (Kathy Manning) are both drawn into in an overwhelmingly Republican district, thus virtually guaranteeing that the Democrat (Manning) will lose her seat. There are no cases where two Republican incumbents seeking re-election are double-bunked. The map also produces at least one district with no incumbents, but that district overwhelmingly favors the Republican Party.
- Neutral, third-party observers have been uniform in their negative assessment of the map. For example, The Princeton Gerrymandering Project gives the map an “F” overall, an “F” in partisan fairness and a “C” in competitiveness. Dave’s Redistricting App assess the map as “very bad” in proportionality and “bad” in terms of competitiveness. Both of these groups are nonpartisan and have given similar grades to Democratic gerrymanders in other states.

³ David Raynor, Tyler Dukes, and Gavin Off. “From population to diversity, see for yourself how NC changed over 10 years.” News and Observer, Oct. 18, 2021, <https://www.newsobserver.com/news/local/article253546964.html>.

In the text that follows, I refer to the “current” maps as the maps that were used in the 2020 election and the “enacted” maps as the maps that have been approved by the North Carolina General Assembly for use in the 2022 elections. While I conducted all of the analysis that follows and wrote all of the verbiage, the shaded red-and-blue maps were produced by John Holden, a GIS expert, using a composite measure of partisanship that I selected and describe below.

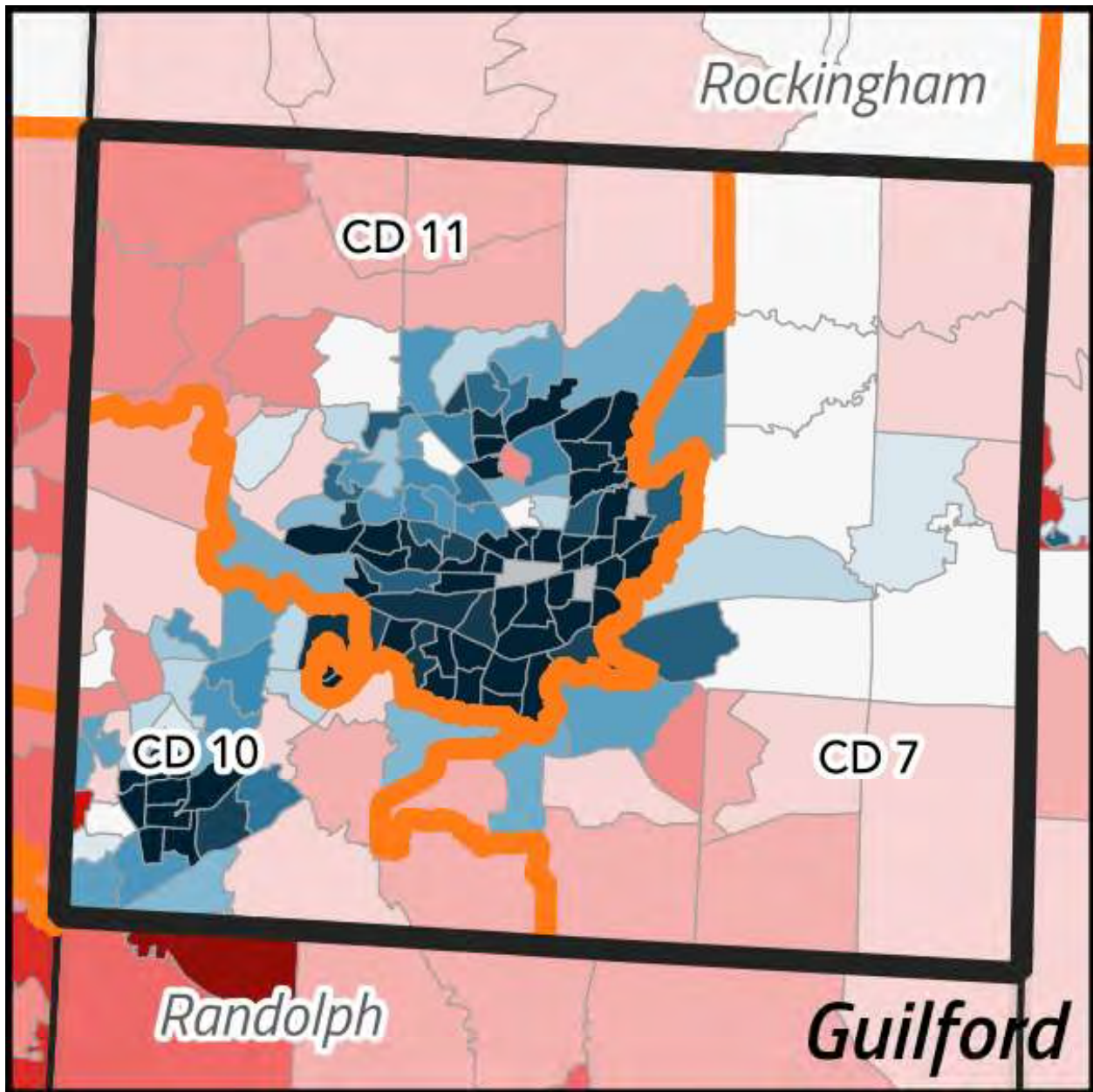
I use three different metrics in the analysis that follows. The first is the Cook Political Report’s Partisan Voter Index (PVI), a standard metric of the expected “lean” of a district using a composite of past elections. The second is a metric created for this analysis that combines the results of the Secretary of Labor and Attorney General races, the two closest Council of State races in North Carolina in 2020, into one measure, which I term the Competitive Council of State Composite (CCSC). This measure allows us to use relatively low-profile elections to get a sense of the “true partisanship” of the district. It is presented below as the raw difference in votes and is used in the shaded red-and-blue maps that follow. Finally, I mention the percent of the electorate that voted for Donald Trump in the 2020 election to give yet another sense of the partisan lean of the district. As the table below shows, the metrics all tell a similar story: the enacted map will produce 10 Republican seats, 3 Democratic seats, and one competitive seat. At most, the enacted map could be expected to elect four Democrats to office in 2022—fewer than in the current map and far below Democratic representation statewide, or the results of other recent statewide elections.

Table 1. Summary Data for Each Enacted Congressional District

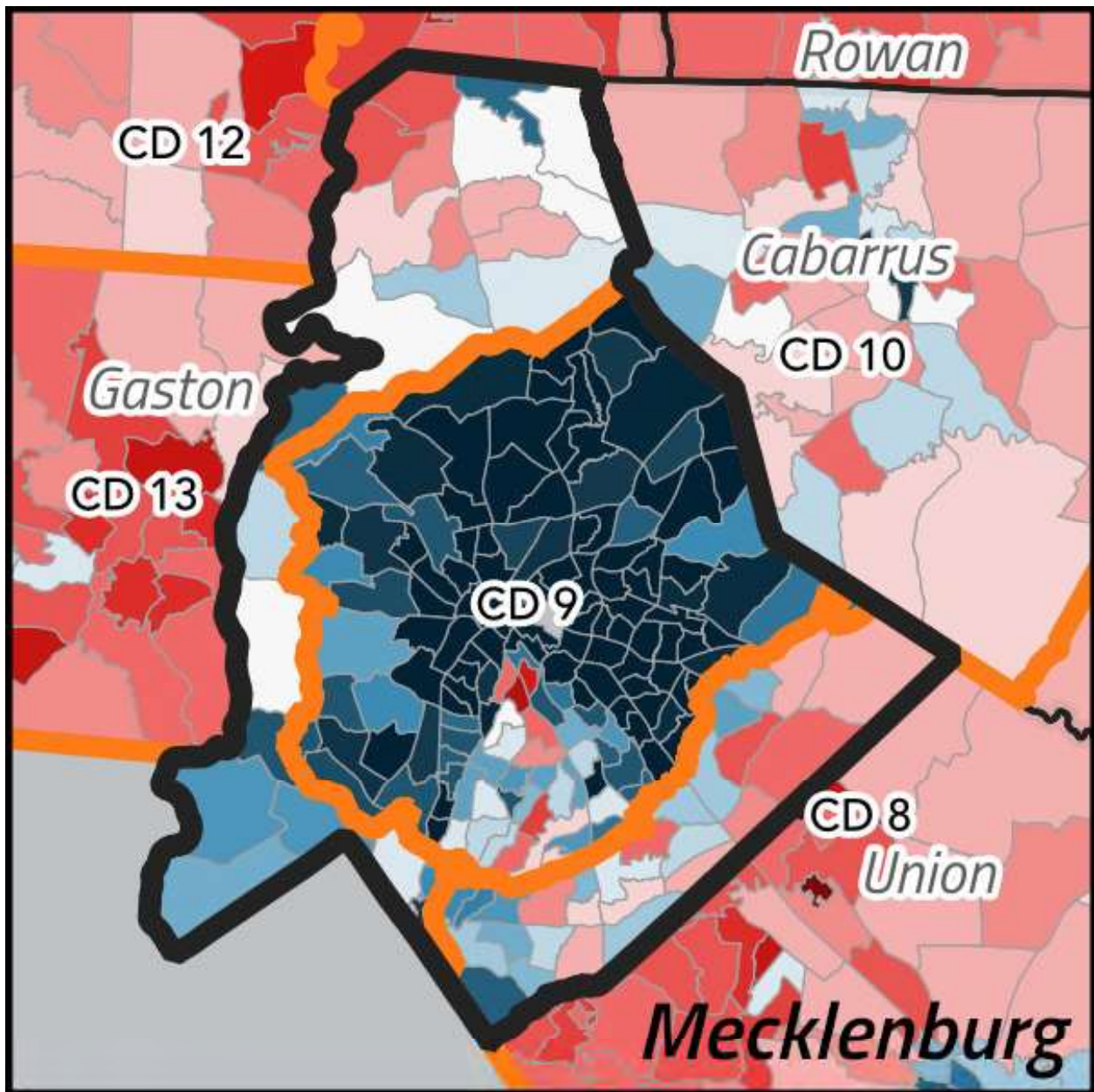
District	PVI	CCSC	Trump Perc
1	R+10	R + 98,969	57%
2	Even	D +40,396	48%
3	R+10	R +111,451	58%
4	R+5	R + 28,045	53%
5	D+12	D +227,327	34%
6	D+22	D + 374,786	25%
7	R+11	R + 115,682	57%
8	R+11	R +125,842	57%
9	D+23	D + 325,717	25%
10	R+14	R + 156,833	60%
11	R+9	R + 94,407	57%
12	R+9	R + 102,404	56%
13	R+13	R + 150,187	60%
14	R+7	R + 58,387	53%

I begin by showing shaded red-and-blue maps demonstrating the trisection of Wake County, Mecklenburg County, and Guilford County. These maps show county lines in black, VTD lines in gray, and district lines in orange. The red and blue shading represents the relative vote margin using my CCSC composite—the composite of the Secretary of Labor and Attorney General races in North Carolina in 2020—in each VTD, with darker blue shading representing larger Democratic vote margins and darker shades of red indicating larger Republican vote margins (both normalized by acreage).

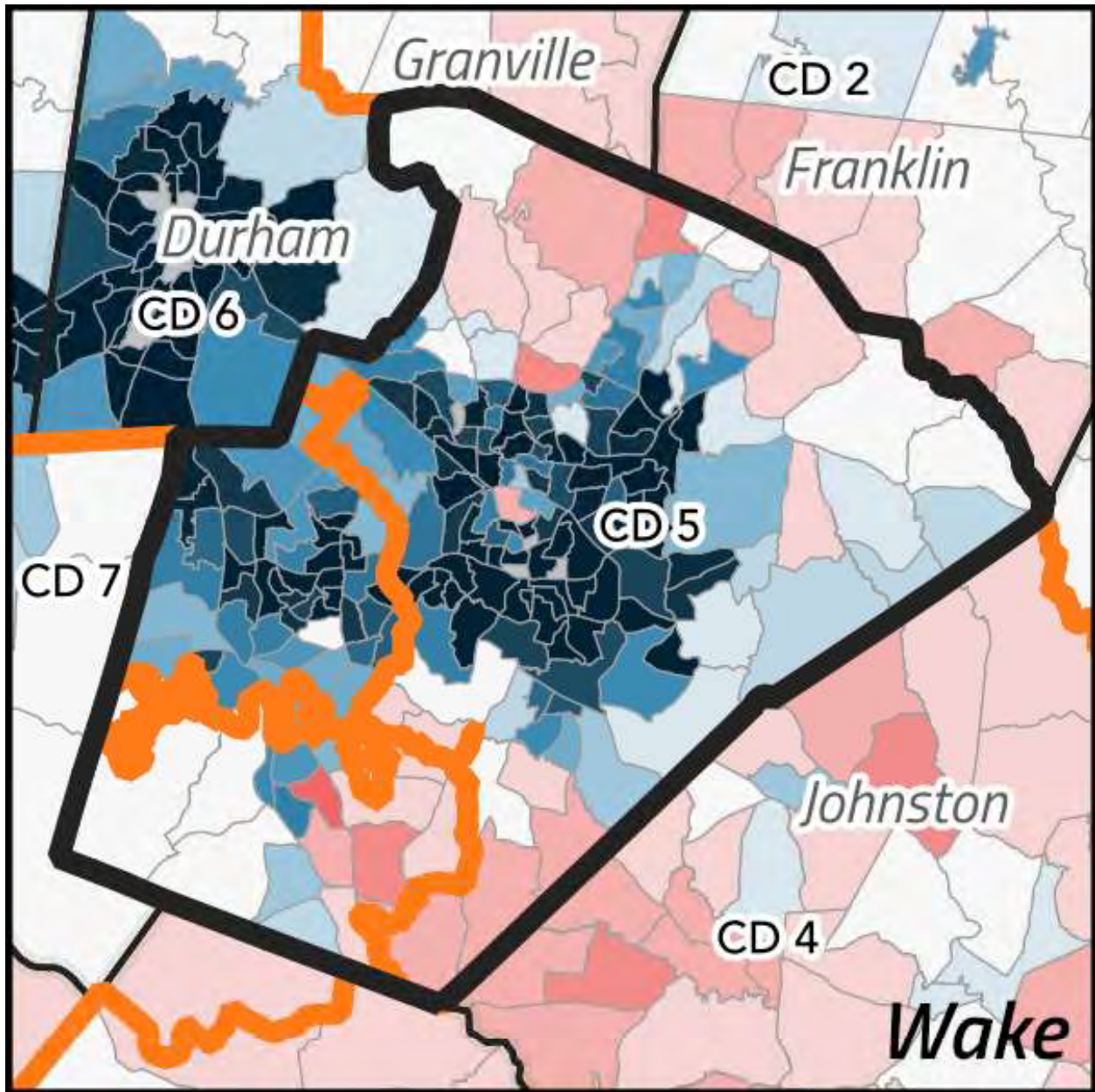
Map 1. Close-Up of Wake County VTD CCSC estimates across three districts



Map 2. Close-Up of Mecklenburg County VTD CCSC estimates across three districts



Map 3. Close-Up of Guilford County VTD CCSC estimates across three districts

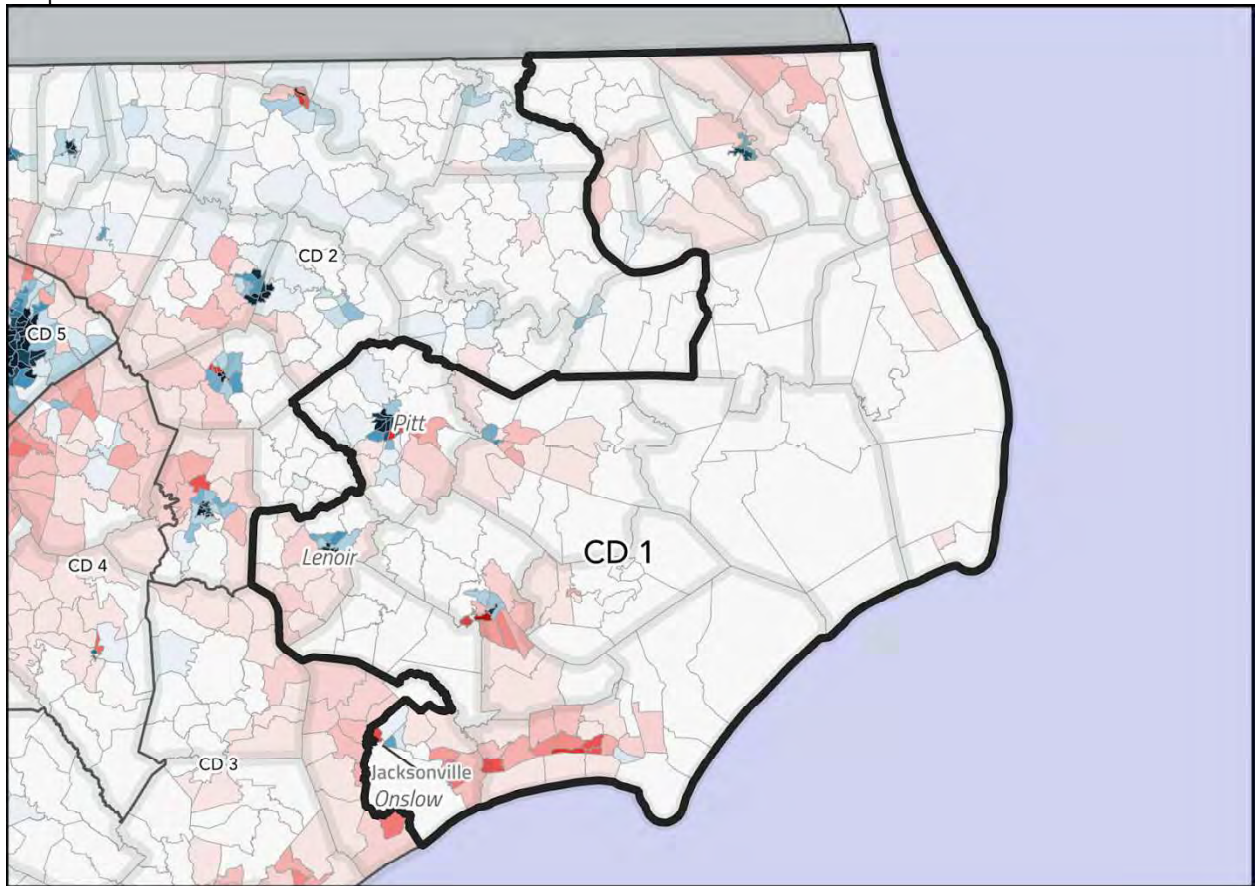


NC-1

The enacted 1st congressional district is mostly comprised of the current NC-3, but also includes part of the current NC-1. Most potential congressional districts in this part of North Carolina would likely lean towards the Republican Party, but to create extra advantage for the Republican Party in other parts of the map, the current map brings the Democratic-leaning areas of Pitt County into District 1, thus removing them from NC-2 and allowing NC-2 to become much more competitive for the Republican Party.

Despite moving the district line westward to include the Democratic portion of Pitt County, the enacted district remains virtually a guaranteed Republican victory with a PVI of R+10 (the current NC-3 is R+14). No Democratic member of Congress in the country represents a district that leans this far towards the Republican Party.

Map 4: VTD CCSC estimates for NC-1



NC-2

The enacted 2nd congressional district includes the core of the current NC-1, along with portions of the current NC-4 and NC-13 districts. The area that largely comprises the new 2nd district is currently represented by Democrat GK Butterfield and is considered a D +12 district by the Cook Political Report, making it a safe Democratic seat. Butterfield has the longest uninterrupted tenure of any member of North Carolina’s congressional delegation. Under the enacted map, however, Butterfield’s district changes radically, loses many of its Democratic strongholds (including the aforementioned loss of the Democratic areas in Pitt County) and now picks up enough Republican voters to move the district to “even,” according to the Cook Political Report. For example, it picks up Caswell County, which does not include a single Democratic-leaning VTD, according to the 2020 Attorney General/Secretary of Labor “CCSC” composite in the map shown below. The 2020 Presidential vote share and composite score reinforce that this is an extremely competitive district. This is an enormous shift for what was formerly a Democratic stronghold.

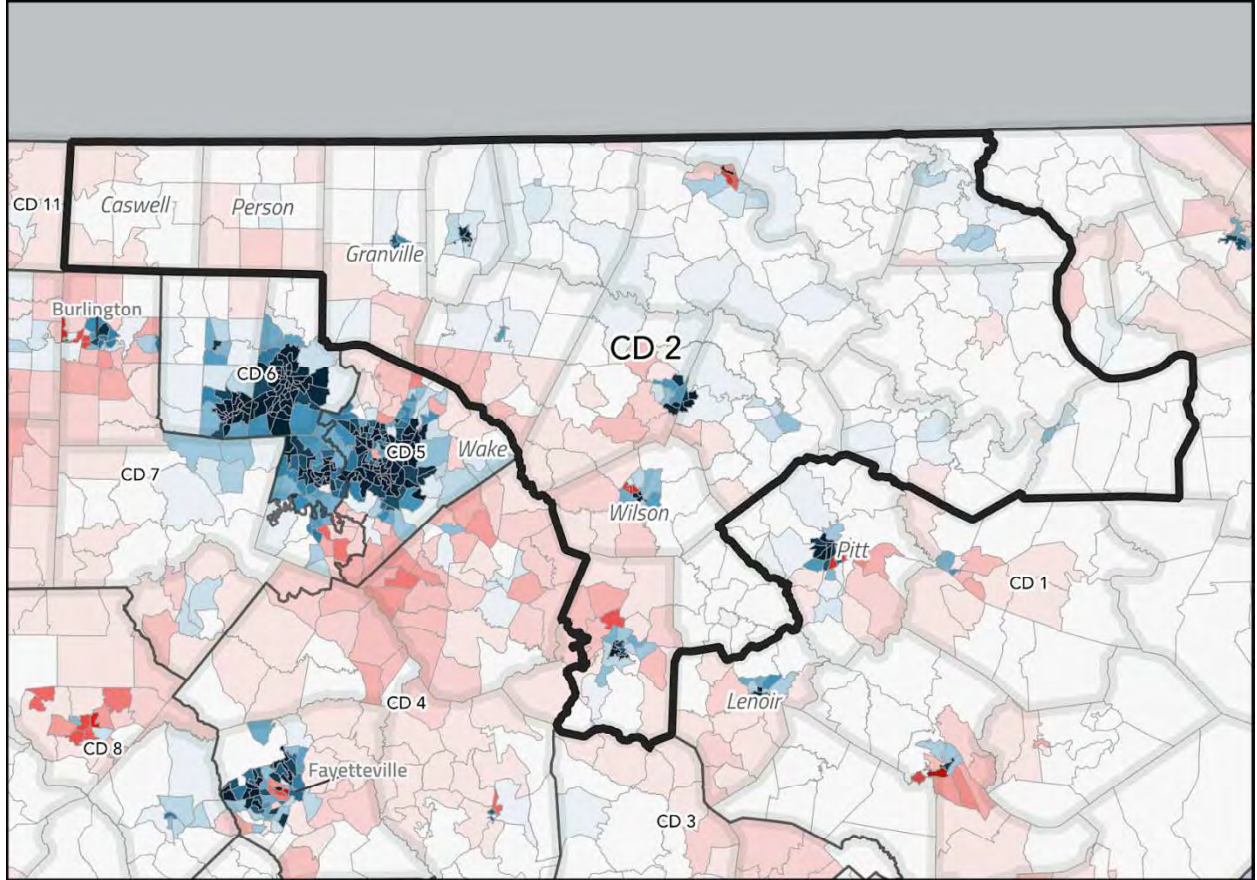
In addition to producing a clear partisan shift, the district is difficult to understand from a communities of interest perspective. The enacted district no longer includes any of Pitt County nor the campus of East Carolina University, which provided much of the economic engine of the district, and now stretches from the Albemarle Sound to the Raleigh-Durham-Chapel Hill metropolitan area, and eventually terminates in Caswell County, just northeast of Greensboro. Notably, Washington County and Caswell Counties have never been paired together in a congressional map in the history of North Carolina, further illustrating how little these counties have in common.

At a micro-level, the changes will split communities in important ways. For example, the cut-out in Wayne County, just west of Goldsboro, NC, splits the students and families in Westwood Elementary School (which is located in NC-2) into two separate districts (NC-2 and NC-4). At one point, NC-2 passes through a narrow cut-off between the Neuse River to Old Smithfield Road that is less than one-third of a mile wide.

After the maps were enacted, G.K. Butterfield announced that he will not seek re-election,⁴ making the district even more likely to shift to the Republican Party. If the Republicans take over this seat, it will be the first time that this part of North Carolina has been represented by a Republican since the late 19th Century.

⁴ Bryan Anderson, “Democrat Rep. Butterfield to Retire, New District is a Toss-Up.” Associate Press News. <https://apnews.com/article/elections-voting-north-carolina-voting-rights-redistricting-e221c0732f457b2273f54ef102424eca>

Map 5. VTD CCSC estimates for NC-2



NC-3

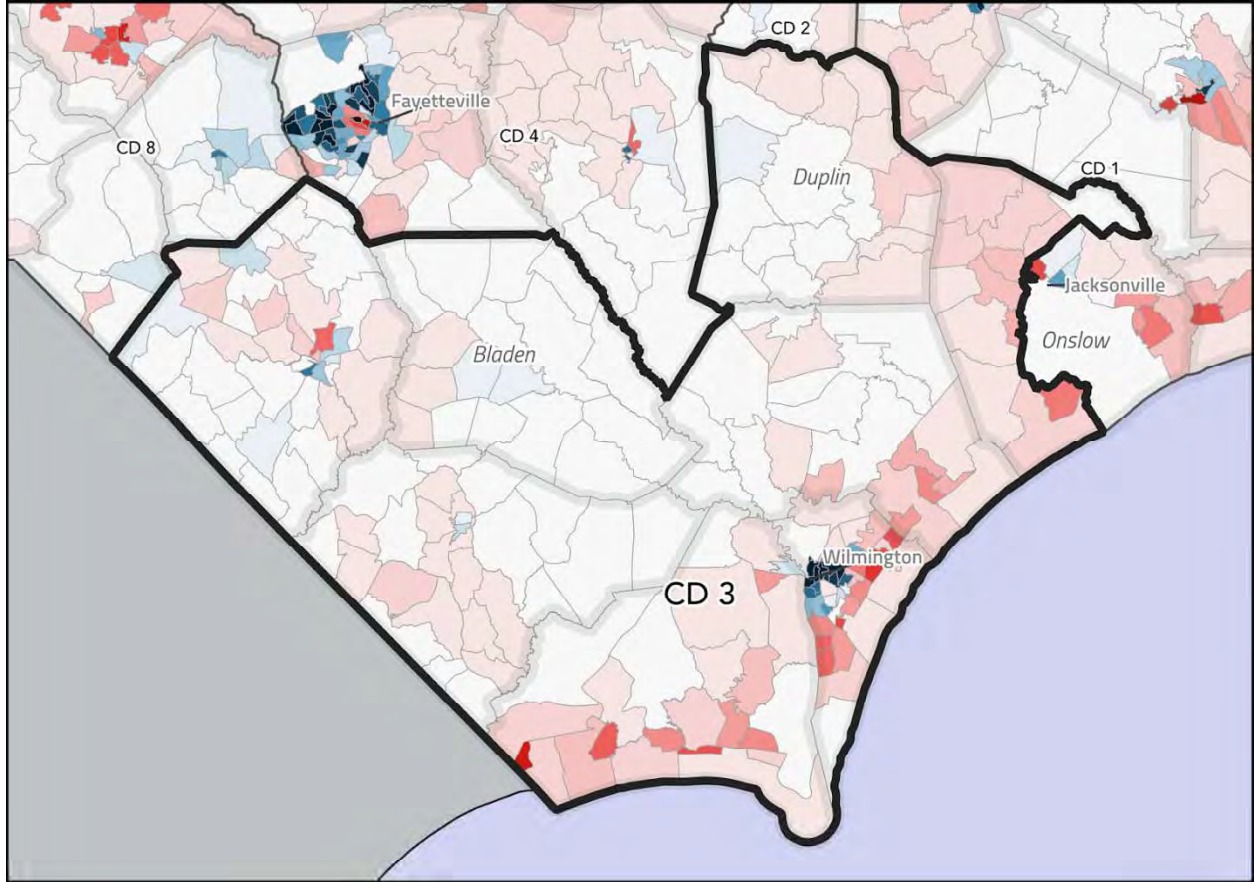
The enacted third congressional district is mostly carved out of the current 7th congressional district, but also includes portions of the 3rd, and 9th districts. The current 7th district is considered R+11 by the Cook Political Report.

This district once again denies North Carolina’s Sandhills a consistent district of their own, despite repeated calls during the redistricting process,⁵ and instead places portions of the Sandhills with the coastal enclave in and around Wilmington. The enacted map also creates an odd appendage in Onslow County that, as described in the section on NC-1, makes little sense from a communities of interest perspective.

The enacted district will almost certainly elect a Republican. It is slightly less Republican than the current NC-7 but still is considered R+10 district by the Cook Political Report, favored the Republicans by over 110,000 votes in the 2020 Attorney General/Secretary of Labor “CCSC” composite, and Donald Trump won the district with 58% of the vote. It is currently represented by Republican David Rouzer and is expected to remain in Republican hands.

⁵ See, for example, Dreilinger, Danielle, “1 woman, 1 North Carolina address, 5 congressional districts. As North Carolina prepares to add a 14th congressional seat, Sandhills residents asked: why can’t it be theirs? *Fayetteville Observer*. Nov 5, 2021.

Map 6. VTD CCSC estimates for NC-3



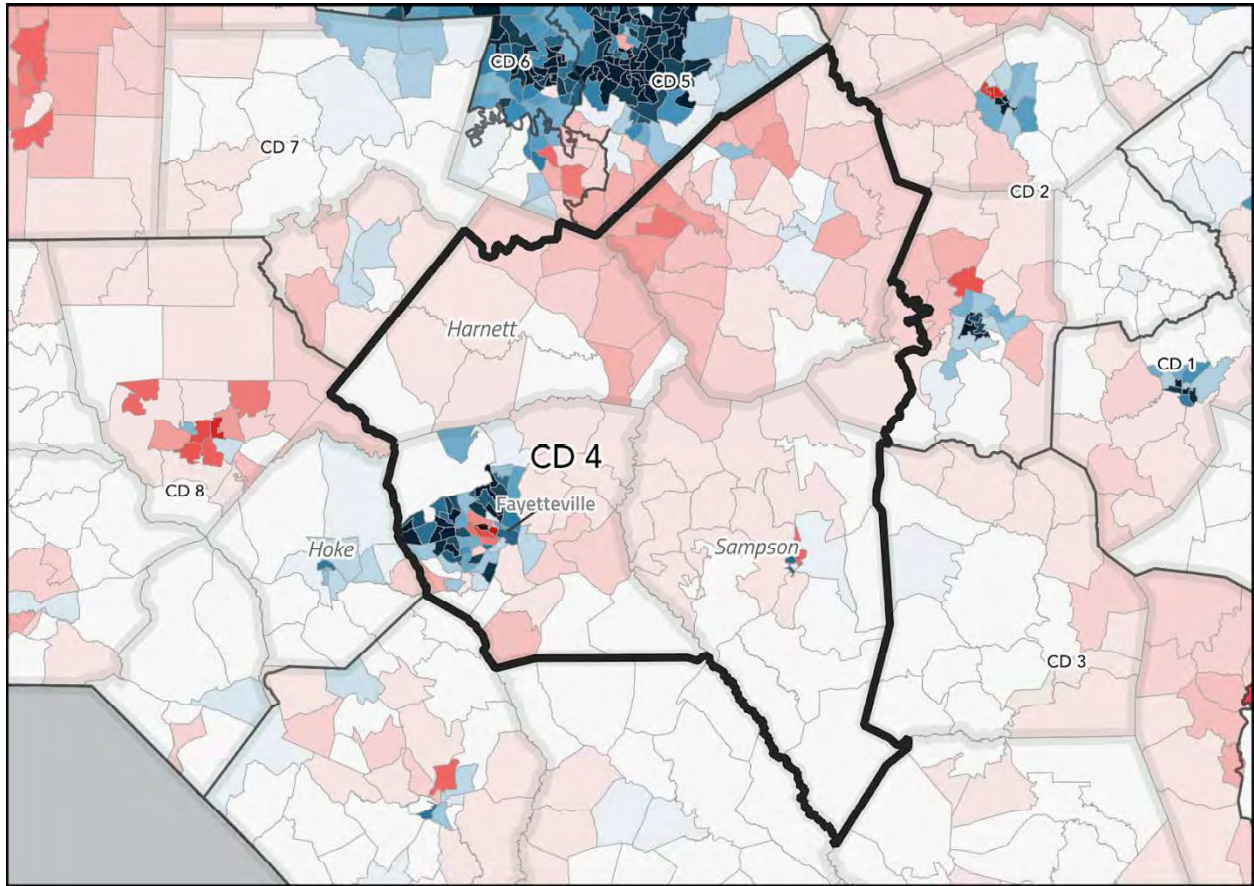
NC-4

The enacted 4th congressional district is carved out of a pocket of North Carolina that includes Johnston County and a portion of Harnett County, both of which are adjacent to Wake County, as well as portions of the Sandhills. The district is carved out of leftover portions from districts 7 and 8 which were R+11 and R+6, respectively. It combines the Democratic-leaning area of Fayetteville with those areas to create a Republican-leaning district.

In addition to the carve out of Republican-leaning VTDs in Wayne County referenced above, this district takes a series of confusing jogs in the Northwest part of Harnett County. A citizen driving Southwest on Cokesbury Road would begin in NC-7, then rest on the line between NC-7 and NC-3, then into NC-4, then back on the line between the two, just before Cokesbury turns into Kipling Road whereupon the driver would move back into NC-7.

This district, which has no incumbent, is considered an R+5 district by the Cook Political Report, gave 53% of its vote share to Donald Trump in 2020, and gave an advantage to Republicans of about 28,000 votes in the 2020 Attorney General/Secretary of Labor “CCSC” composite.

Map 7. VTD CCSC estimates for NC-4

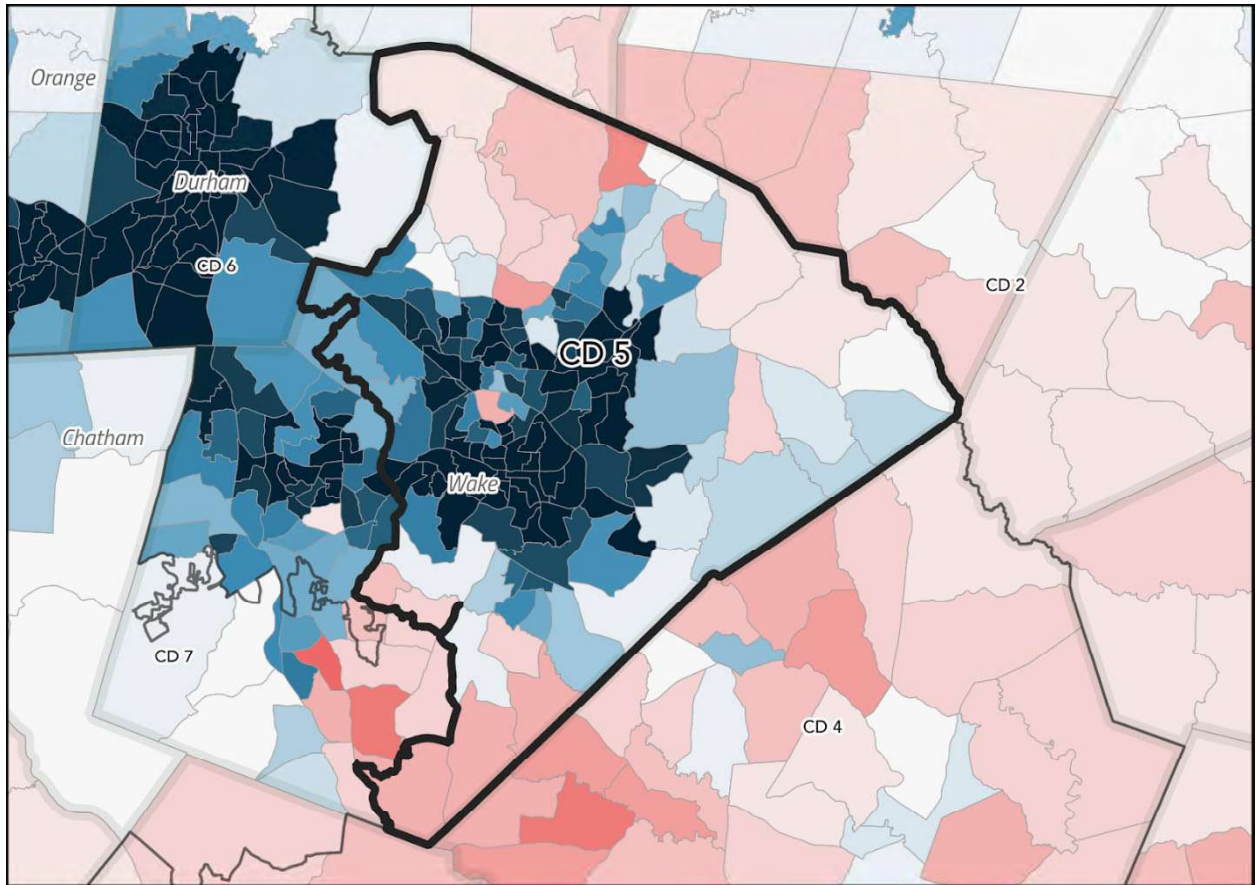


NC-5

The enacted map cracks Democrats in Wake County into three districts. Unlike NC-6 and NC-7, NC-5 is situated completely within Wake County and is made up of portions of current NC-2 and NC-4, districts that were D+12 and D+16. The effects of this are to pack Democratic voters into one district, thus increasing the probability that Republicans can win at least one of the adjacent districts. The enacted district is rated by the Cook Political Report as D+12, the CCSC shows a Democratic advantage of over 227,000 votes and Donald Trump won just 34% of the vote.

This map clearly splits communities of interest. In one particularly egregious example, a small vein runs up Fayetteville Road by McCuller's Crossroads in Fuquay-Varina, where the vein itself is in NC-7 and the areas on either side of it are in NC-5.

Map 8. VTD CCSC estimates for NC-5

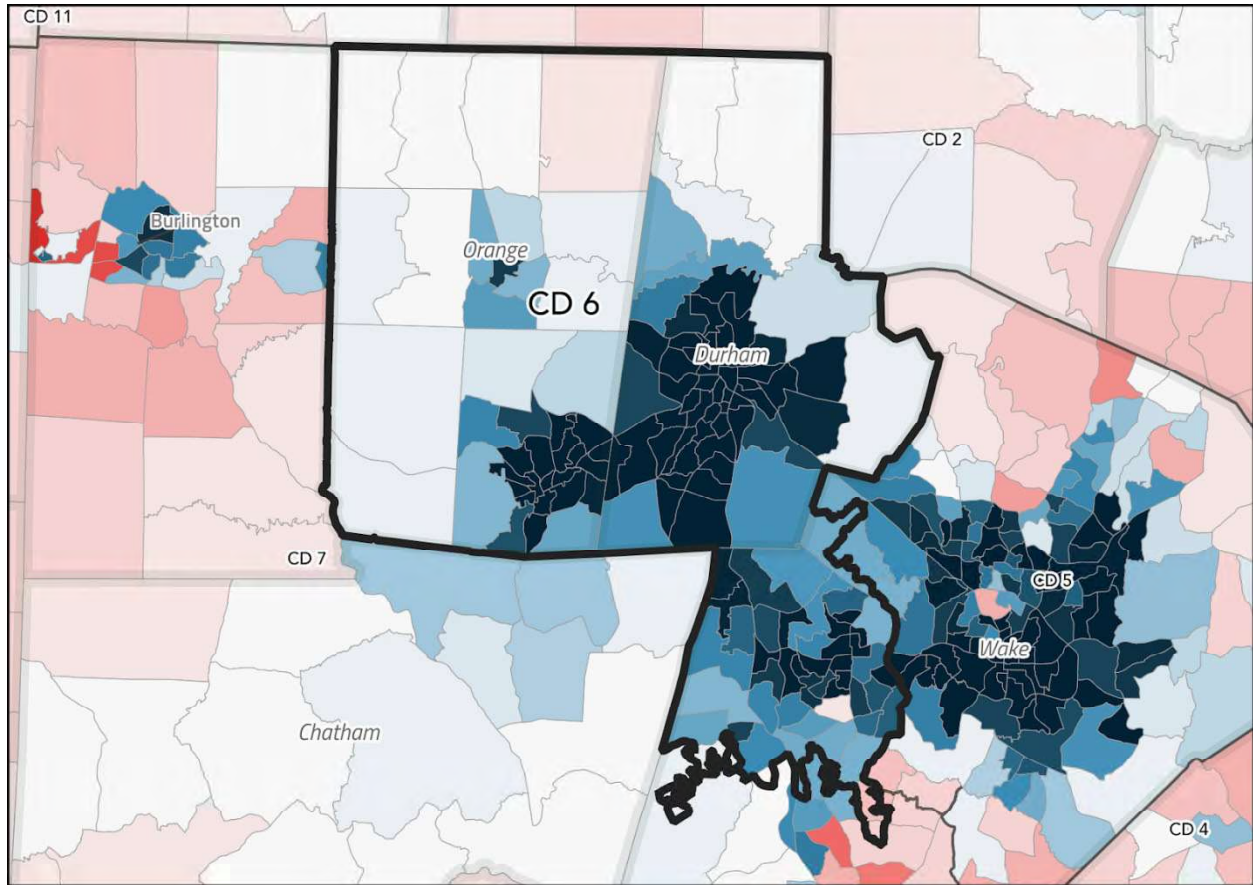


NC-6

The 6th district packs all of Orange, Durham counties and part of Wake County together into one overwhelmingly Democratic district, which is created out of portions of the current Districts 4 and 2 (previously D+16 and D+12, respectively). As the map below demonstrates, the district only includes four marginally Republican VTDs, according to the 2020 Attorney General/Secretary of Labor “CCSC” composite. Cook Political Report estimates this to be a D+22 district, Democrats had more than a 374,000 vote advantage in the CCSC and Donald Trump won only 25% of the vote in 2020. This district packs a greater proportion of Democratic voters in a single district than any district from the previous map. This district, like NC-5, includes Wake County, which is divided across three districts in the enacted map. The packing of Democrats in this district enables adjacent districts, in particular NC-7, to be drawn in ways that make it easier for Republican candidates to win.

The contours of this district border with NC-7 on the southern end splits communities of interest in almost comical ways. In one example, a person traveling south on New Hill Olive Chapel Road would, in a matter of a few miles, move from enacted NC-7 to the line between NC-6 and -7, back into NC-7, through NC-6, back into NC-7, back to the border between the two, back into NC-7, back to the border between the two, then back into NC-7. The contours of these lines are confusing to voters, and, as the map demonstrates, serve to pack as many Democratic precincts as possible into NC-6.

Map 9. VTD CCSC estimates for NC-6

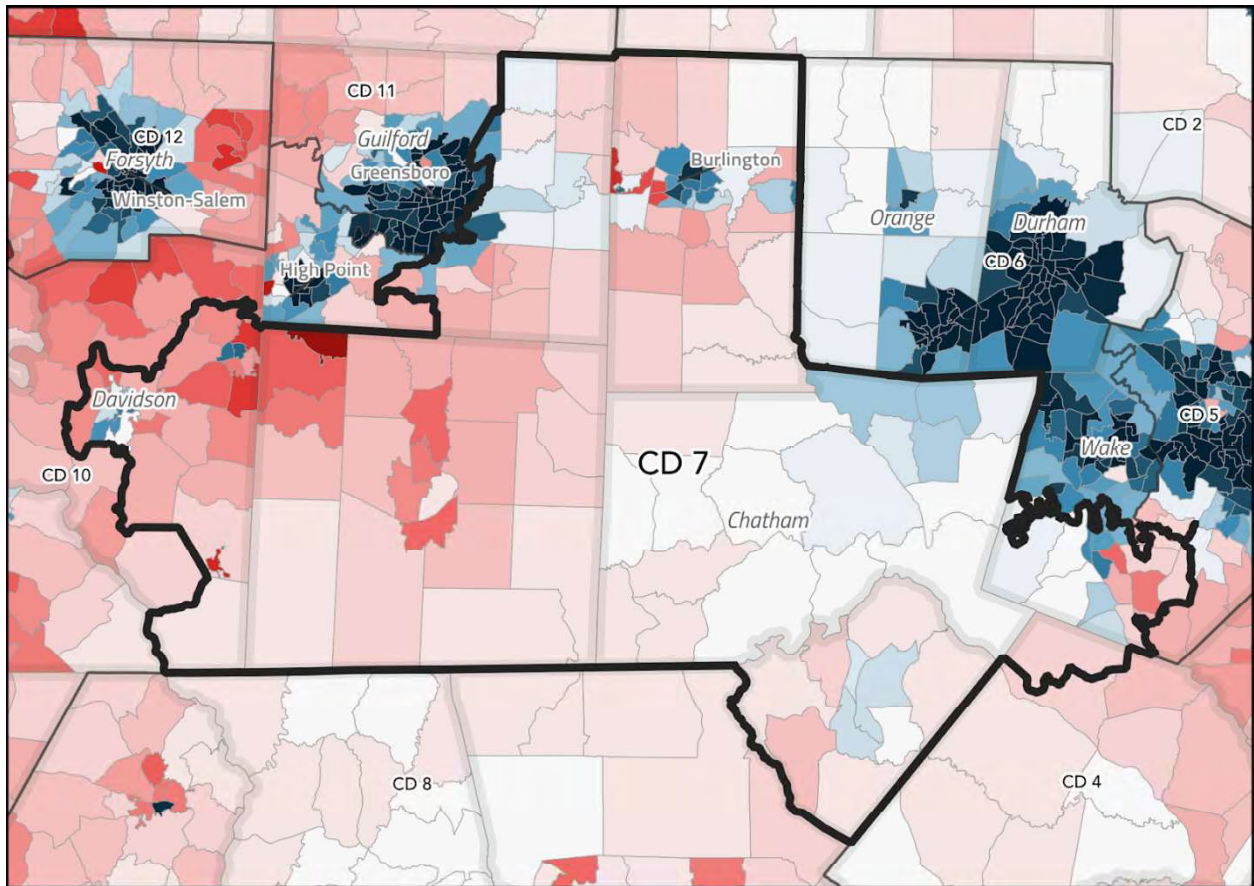


NC-7

The enacted 7th district includes the Republican-leaning Randolph, Alamance, Chatham and Lee Counties as well as portions of Guilford, Wake, and Davidson Counties. It is carved out of districts 13, 6, 4 and 2 from the current map. This district as it is drawn splits both Guilford and Wake Counties (each of which of is divided three times in the map as a whole). Despite including portions of two of the most Democratic counties in North Carolina, the district studiously avoids the Democratic-leaning areas of both counties. The eastern portion of the district in Wake County, near Apex, takes the unusual and confusing contours described in the description of NC-6 above.

The enacted NC-7 is considered R + 11 by the Cook Political Report, it gave Republicans a 115,682 vote advantage in the CCSC, and Donald Trump won 57% of the vote in this district. A Democratic candidate has virtually no chance of victory in the enacted 7th.

Map 10: VTD CCSC estimates for NC-7

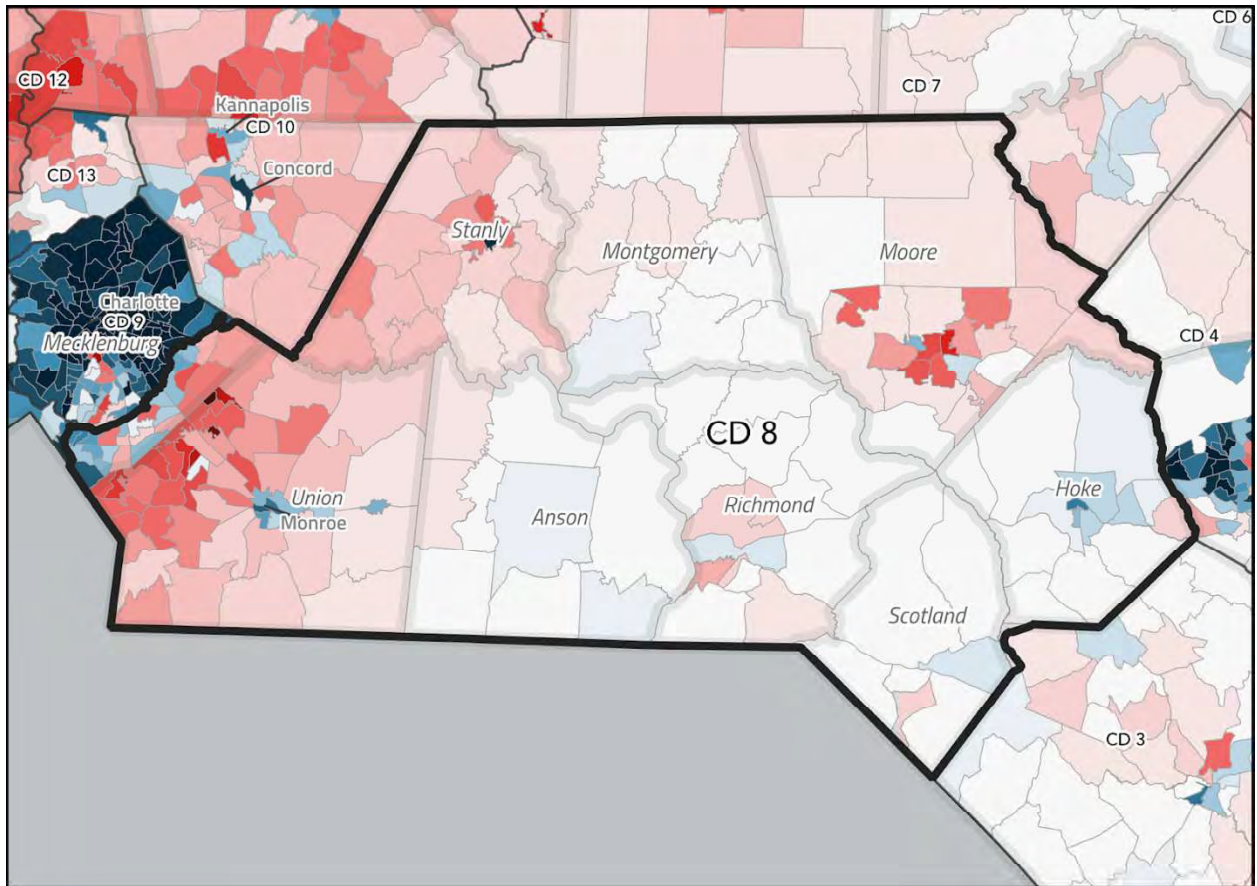


NC-8

The 8th congressional district stretches from the Sandhills into Mecklenburg County and includes portions of the current 9th, 12th, and 8th districts. The core of the district comes from NC-9, currently R+6. The enacted NC-8 includes the entirety of Scotland, Hoke, Moore, Montgomery, Anson, Union, and Stanley counties as well as the southern and eastern edge of Mecklenburg County. Although it includes portions of Mecklenburg County, one of the most Democratic-leaning areas in the state, as well as Democratic municipalities of Union, Anson, and Hoke, the 8th district is unlikely to elect a Democrat under any reasonable scenario. The enacted map stops just shy of the some of the darkest blue VTDs in Mecklenburg County.

The Cook Political Report calls the enacted NC-8 an R+11 district, the CCSC shows that the Republican candidate garnered over 115,000 more votes than the Democratic candidates for the two closest Council of State races, and Donald Trump won approximately 57% of the vote in the 2020 election.

Map 11: VTD CCSC estimates for NC-8



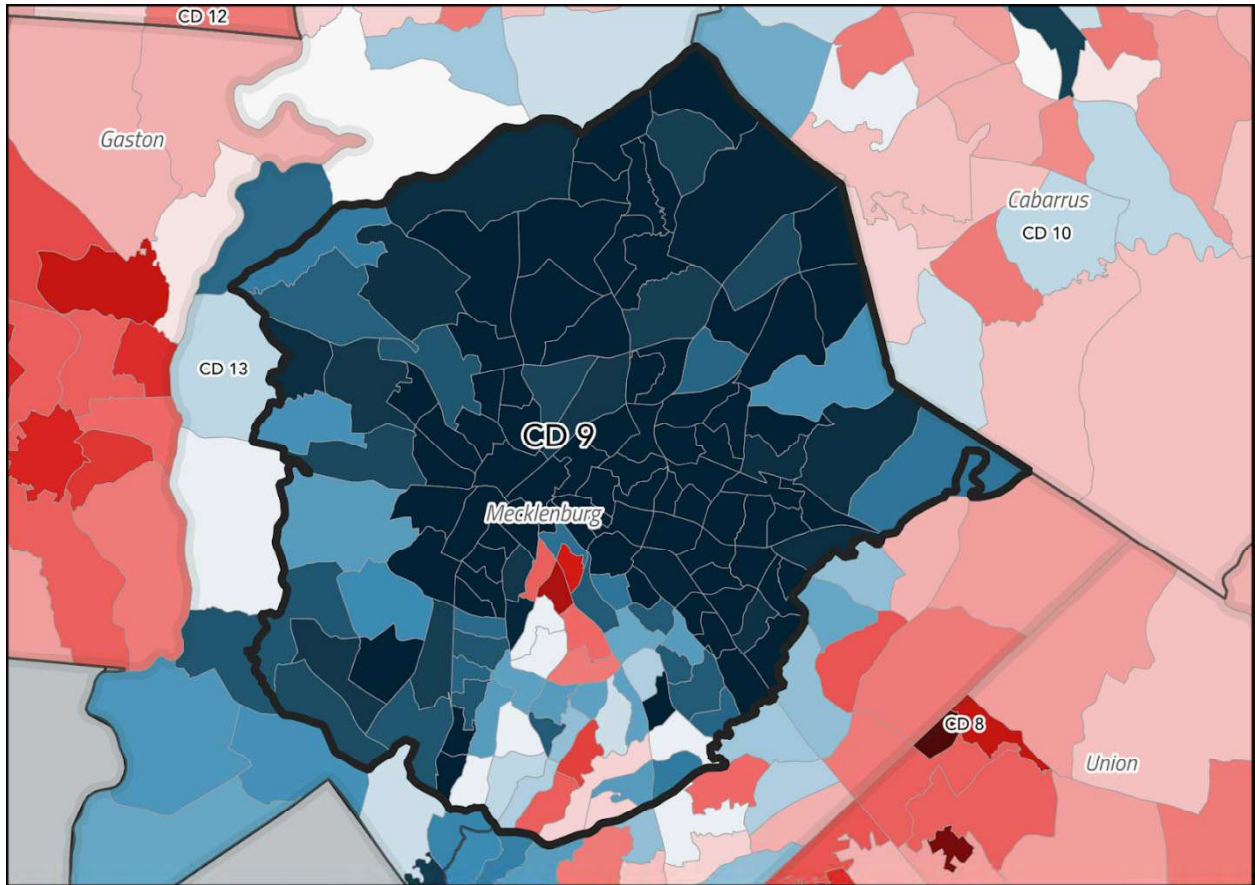
NC-9

The core of the enacted 9th congressional district come from NC-12, but it also includes portions of the current NC-9. The result is the most packed district in the enacted map. The Cook Political Report rates the enacted NC-9 as a D+23 district, meaning that it leans more heavily towards the Democratic Party than any district in the last map. Donald Trump won just 25% of the vote in this district in the 2020 Presidential election and the CCSC indicates that the Democrats won over 325,000 more votes than the Republicans in the two closest Council of State races in 2020.

As with all examples of packing, the key to understanding this district is its effects on the surrounding districts. By ensuring that the Democratic candidate in NC-9 wins by an overwhelming margin, Republican voters will be more efficiently distributed across other districts, where they can affect the outcome. This ensures that neighboring district 8, for example, will not be competitive. This also has the effect of ensuring that Republican voters in NC-9 have no chance of securing representation from a member of their own party.

The geographic contortions of this district are most apparent on its western edge, where a mere 8 miles separates the western edge of district 9 and the Mecklenburg County line.

Map 12. VTD CCSC estimates for NC-9

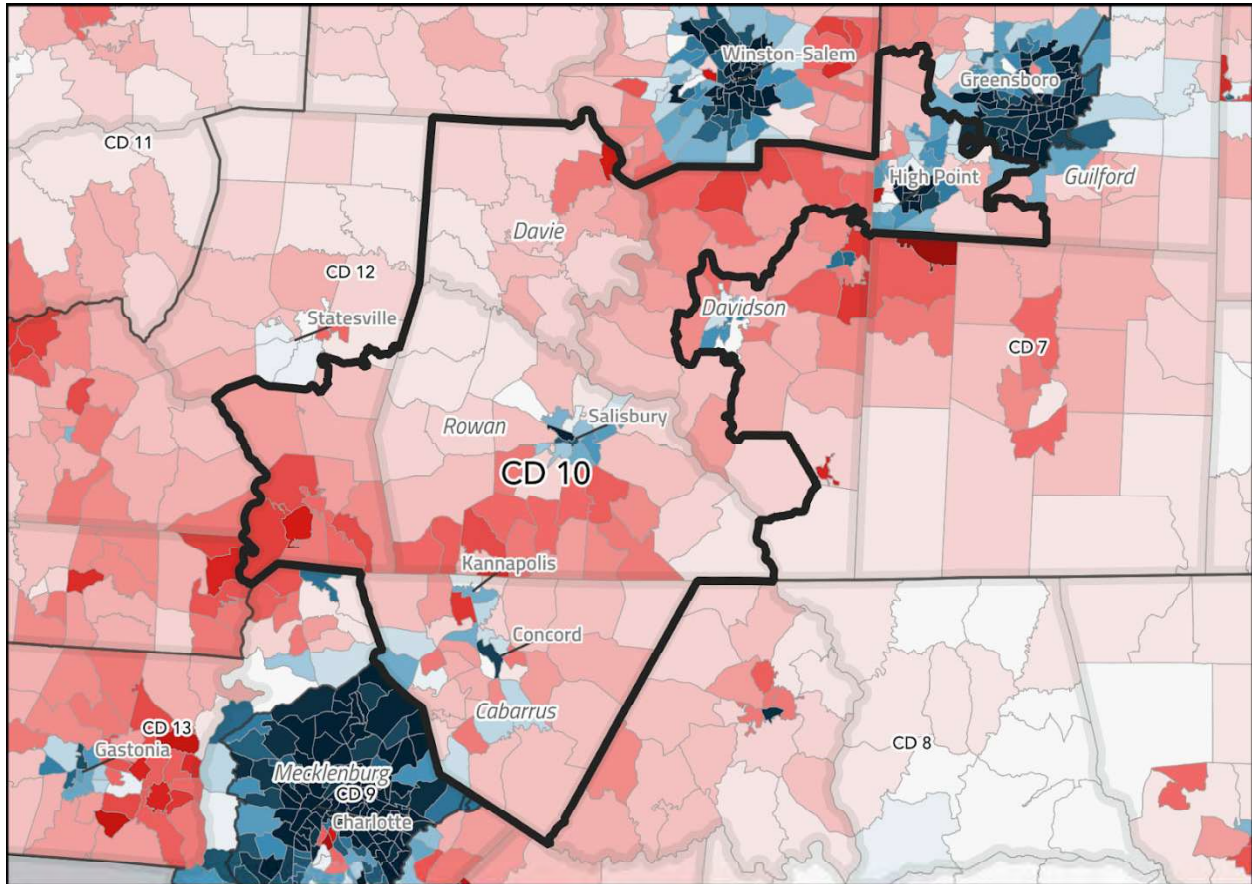


NC-10

The enacted NC-10 includes all of Rowan, Cabarrus and David County and parts of Iredell, Davidson and Guilford Counties. It is drawn out of portions of the current 10th, 9th, 6th, and 13th districts. Despite the inclusion of carefully curated portions of Democratic Guilford County, this district is a safe Republican seat and effectively removes any possibility that Democratic voters in High Point, Salisbury, Kannapolis, Concord, and Cabarrus can elect a member of their own political party. The Cook Political Report rates this district as R+14, the CCSC indicates that Republicans won more than 156,000 additional votes in the two key council of state races, and Donald Trump won over 60% of the Presidential vote in the enacted district.

The enacted NC-10 includes High Point, while NC-11 includes most of Greensboro and NC-12 contains Winston-Salem, meaning that the enacted map splits all three points of North Carolina's Piedmont Triad into separate congressional districts that favor Republicans. In the current map, this community of interest is together in NC-6, represented by Democrat Kathy Manning.

Map 13: VTD CCSC estimates for NC-10



NC-11

The enacted 11th congressional district is carved out of the 5th, 10th, and 6th districts. This map places a portion of Guilford County, including the City of Greensboro in a district with Rockingham, Stokes, Surrey, Alleghany, Ashe, Wilkes, Caldwell, and Alexander counties as well as a tiny boot-shaped sliver of Watauga County.

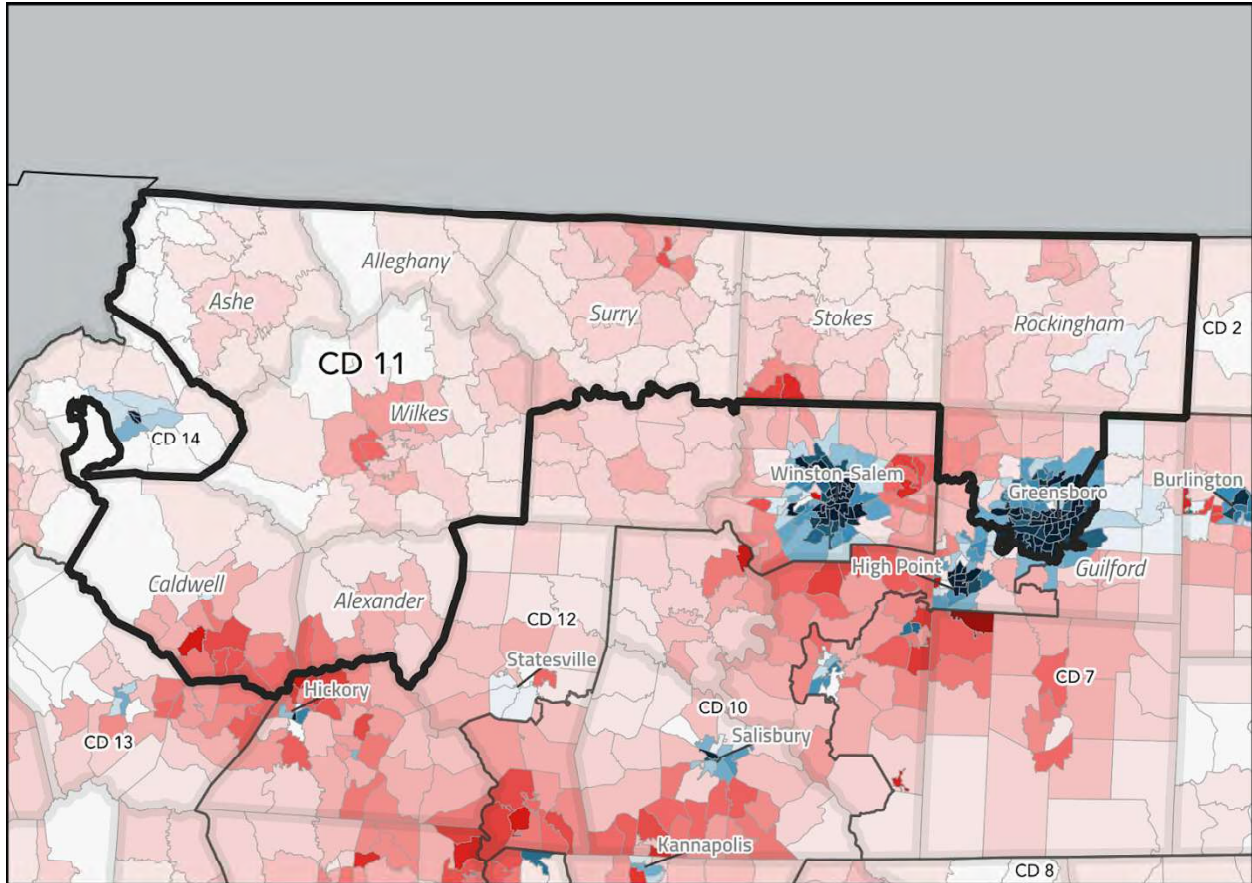
As discussed elsewhere, the enacted map splits Guilford County across three districts (the 10th, 11th, and 7th) and puts all three points of the Piedmont triad in separate districts. By placing most of Greensboro in this overwhelmingly Republican district, this ensures that the City of Greensboro, among the most Democratic and racially diverse cities in the state of North Carolina, will not be represented by a Democrat.

The enacted district is rated by Cook as R+9, 57% of the district voted for Donald Trump in the 2020 election, and Republicans held a 94,000 vote lead in the two closest Council of State elections. No Democrat in the current Congress represents a district that leans this heavily Republican.

It is difficult to imagine any sense in which this district has shared interests. Geographically, it spans radically different parts of the state. Greensboro is firmly in the Piedmont, resting at under 900 feet elevation. Watauga and Ashe counties, by comparison, reside in the high country, with elevations that consistently run above 5500 feet. The corners of the district have different area codes, are served by different media markets, and share virtually no characteristics in common other than the fact that they are both within North Carolina. In the history of North Carolina, Caldwell and Rockingham Counties have never shared a congressional representative.

In addition to its geographic span, the enacted district stands out for its double-bunking of Republican Virginia Foxx and Democrat Kathy Manning. To shoe-horn Virginia Foxx into the new district, the mapmakers carved out a tiny sliver of Watauga County to allow her house to fall into the redrawn district. This passage is so narrow, in fact, that is connected by a stretch of land that is roughly 3 miles wide and requires a traverse of the Daniel Boone Scout Trail.

Map 14: VTD CCSC estimates for NC-11

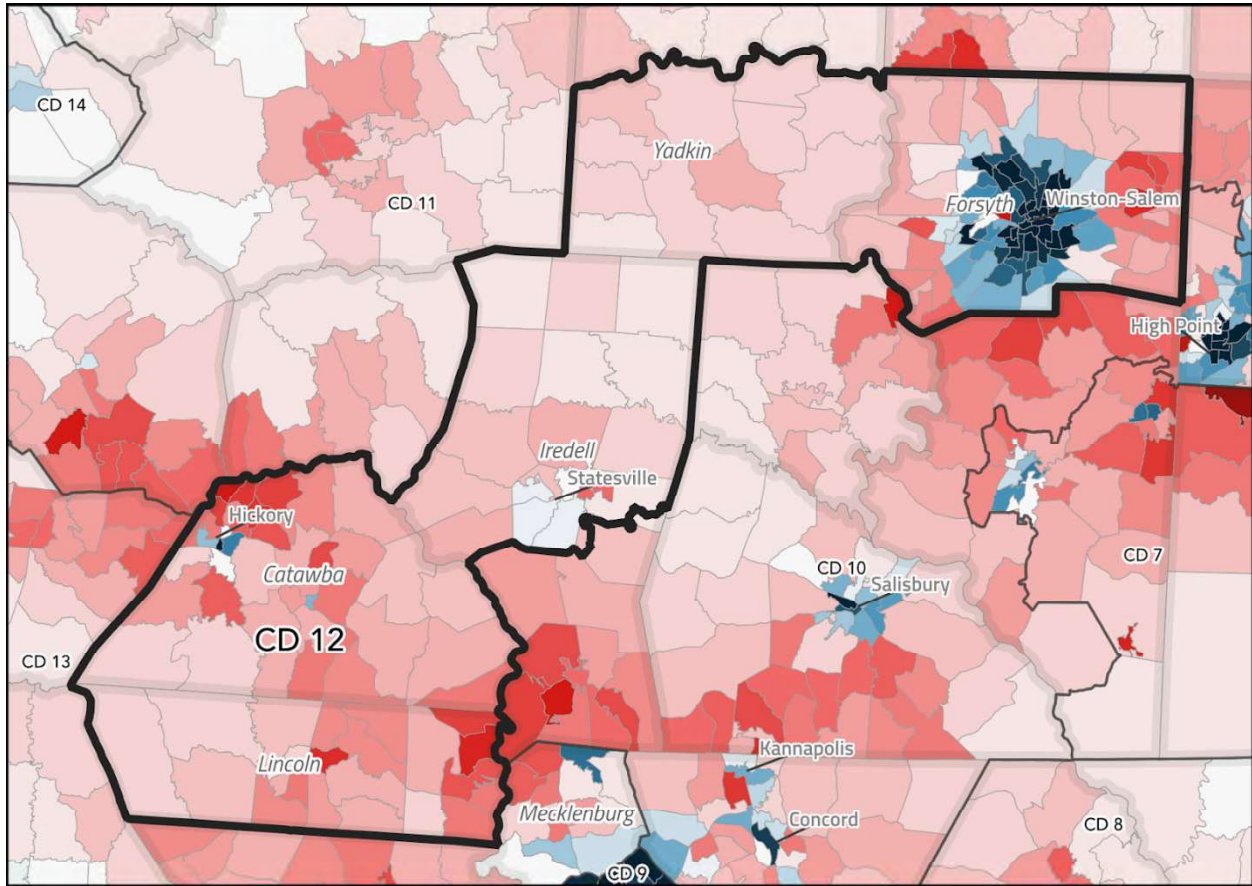


NC-12

The 12th congressional district stretches from Lincoln County at the southwestern corner through Catawba, the Northern part of Iredell, Yadkin, and Forsyth Counties. As the map below makes clear, by including Winston-Salem with this overwhelmingly red swath of geography and walling it off from Democratic voters in High Point, the enacted map ensures that Republican member of Congress Patrick McHenry, who lives at the southeast corner of this district, will maintain his seat and the Democratic voters in Winston-Salem will have virtually no chance to elect a member of their own party.

The Cook Political Report rates this district as R+9, Republicans had over a 100,000 vote margin in the two closest Council of State races, and Donald Trump won over 56% of the vote in this district.

Map 15: VTD CCSC estimates for NC-12



NC-13

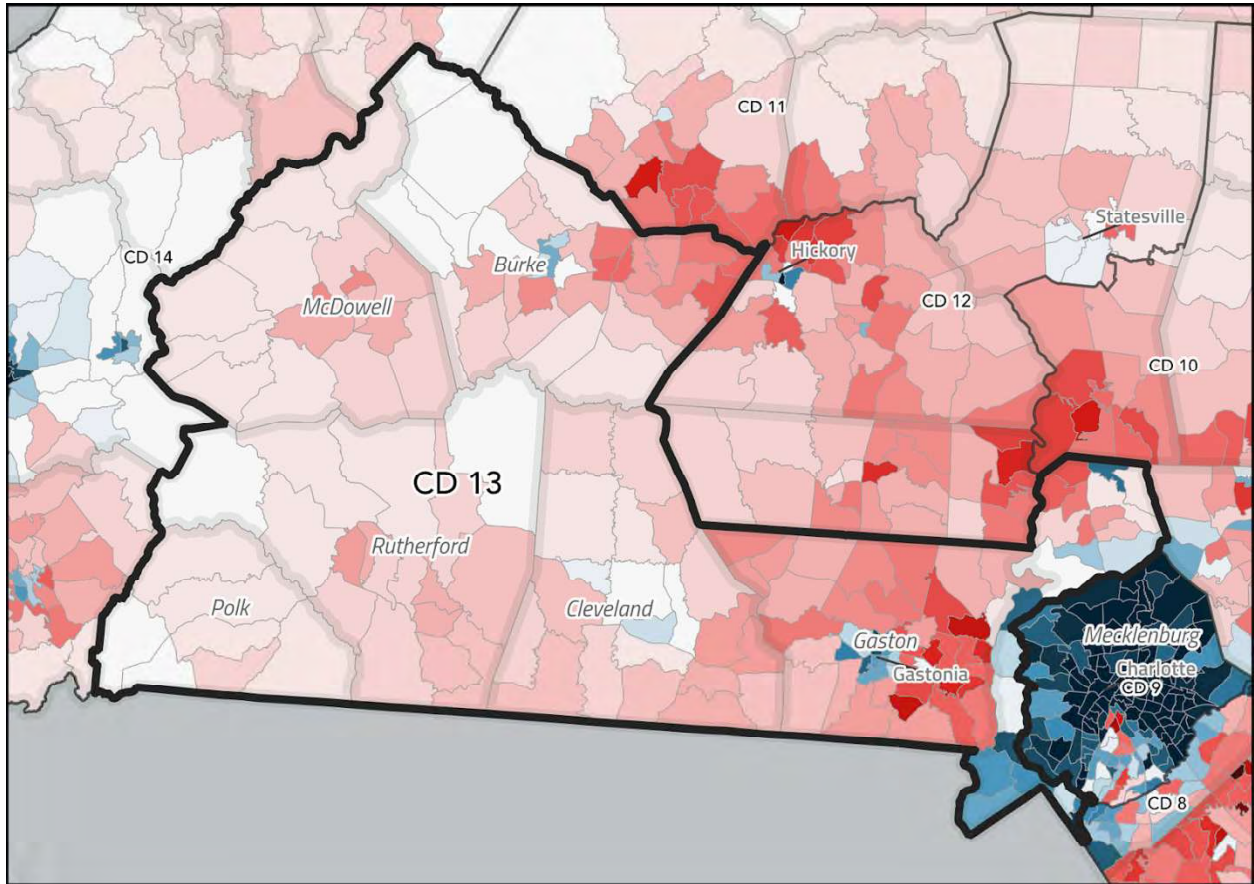
The 13th congressional district is carved out of portions of the old 11th, 5th, and 12th, and 10th districts. As the map that follows demonstrates, the district includes Polk, Rutherford, McDowell, Burke, Cleveland, Gaston, and part of Mecklenburg County.

The district was generally understood to be created for Republican Speaker of the House Tim Moore who lives in Cleveland County—the *Charlotte Observer*'s editorial board even referred to it as “Moore’s designer district.”⁶ Republican Madison Cawthorn recently announced that he will run in the 13th, and Moore soon noted that he would stay in the General Assembly. While the specifics of the candidates have changed, the fact that this is a Republican district that will elect a Republican candidate has not. This district was rated by the Cook Political Report as R+13, has a CCSC of R+150,187 votes, and gave 60% of its votes to Donald Trump in 2020.

As mentioned in the discussion of NC-9, the narrow passageway that is necessary to squeeze NC-13 into Mecklenburg County only consists of a few miles at one point--stretching from a Food Lion to the Mecklenburg County line. The enacted district also creates unusual pairings of counties that share little in common. For example, Polk and Mecklenburg Counties have never resided in the same district.

⁶ <https://www.charlotteobserver.com/opinion/article255769626.html>

Map 16. VTD CCSC estimates for NC-13

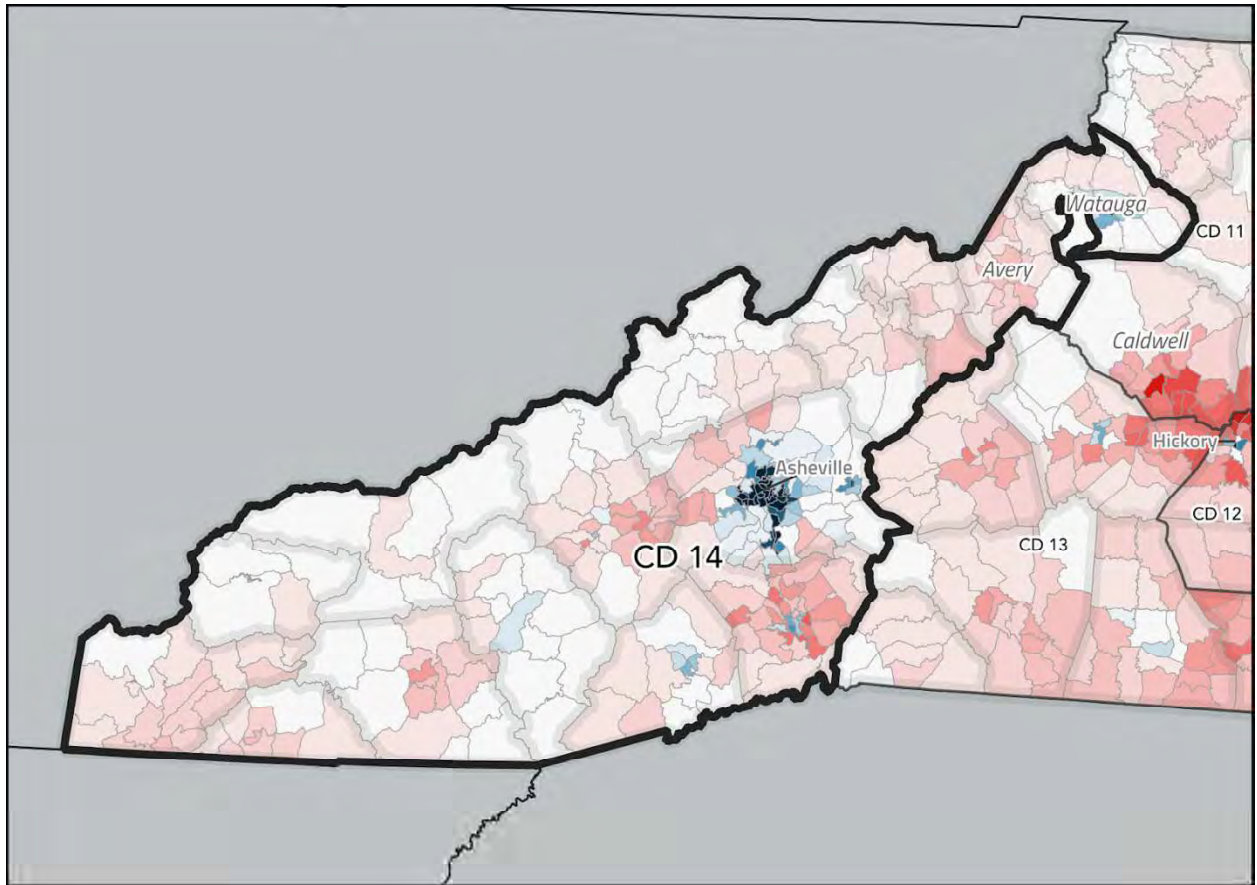


NC-14

The enacted 14th district includes most of the 11th congressional district and includes part of Watauga County, which previously sat in the 5th congressional district. The former 11th congressional district also lost the Republican strongholds of Polk and McDowell counties, as well as part of Rutherford County. These changes shifted the district slightly in the Democratic direction (from a PVI of R+9 to R+7), although not enough to give a Democratic candidate a reasonable chance of victory. No Democrat in Congress represents a district that has a PVI score that leans this heavily towards the Republican Party. As a result, the 14th is expected to stay squarely in Republican hands.

Geographically, the 14th is a sprawling district that includes three media markets. Traversing the district from its western end in Murphy to its northeastern corner in Stony Fork would take approximately four hours. Perhaps because of the geographic incompatibility, Watauga has not been in a district with the western end of the state since 1871—before Graham and Swain Counties were even in existence. Adequately representing this massive swath of geography would be difficult for any member of Congress—Republican or Democrat.

Map 17. VTD CCSC estimates for NC-14



Conclusion

After analyzing the characteristics of the map as a whole as well as the characteristics of each district in isolation, it is clear that the enacted map will increase the number of Republican members of Congress and decrease the number of Democratic members of Congress in North Carolina's congressional delegation. Democratic voters in the vast majority of the districts will have no chance at representation from a member of their own party and Republican voters in the districts that pack Democrats will have no chance of representation from a member of their own party. This is not a result of natural packing, or geographic clustering, but rather because the congressional district lines shifted in ways that, taken together, benefit the Republican Party. Not only does the enacted map create a substantial partisan advantage for which there is no apparent explanation other than gerrymandering, but it unnecessarily splits communities of interest and will alter representational linkages in ways that, in some cases, have never been seen in North Carolina's history.



Christopher A. Cooper

Electronically Filed
2021-11-30 14:15:41

EXHIBIT H

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

SUPERIOR COURT DIVISION

No.21 CVS 500085

REBECCA HARPER; AMY CLARE
OSEROFF; DONALD RUMPH; JOHN
ANTHONY BALLA; RICHARD R. CREWS;
LILY NICOLE QUICK; GETTYS COHEN
JR.; SHAWN RUSH; JACKSON THOMAS
DUNN, JR.; MARK S. PETERS; KATHLEEN
BARNES; VIRGINIA WALTERS BRIEN;
DAVID DWIGHT BROWN,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN
HIS OFFICIAL CAPACITY AS CHAIR OF
THE HOUSE STANDING COMMITTEE
ON REDISTRICTING; SENATOR
WARREN DANIEL, IN HIS OFFICIAL
CAPACITY AS CO-CHAIR OF THE
SENATE STANDING COMMITTEE ON
REDISTRICTING AND ELECTIONS;
SENATOR RALPH HISE, IN HIS
OFFICIAL CAPACITY AS CO-CHAIR OF
THE SENATE STANDING COMMITTEE
ON REDISTRICTING AND ELECTIONS;
SENATOR PAUL NEWTON, IN HIS
OFFICIAL CAPACITY AS CO-CHAIR OF
THE SENATE STANDING COMMITTEE
ON REDISTRICTING AND ELECTIONS;
SPEAKER OF THE NORTH CAROLINA
HOUSE OF REPRESENTATIVES
TIMOTHY K. MOORE; PRESIDENT PRO
TEMPORE OF THE NORTH CAROLINA
SENATE PHILIP E. BERGER; THE
NORTH CAROLINA STATE BOARD OF
ELECTIONS; DAMON CIRCOSTA, IN
HIS OFFICIAL CAPACITY AS
CHAIRMAN OF THE NORTH

**EXPERT REPORT OF DR. JOWEI
CHEN**

CAROLINA STATE BOARD OF ELECTIONS; STELLA ANDERSON, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; JEFF CARMON III, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; STACY EGGERS IV, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; TOMMY TUCKER, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendants.

I, Dr. Jowei Chen, upon my oath, declare and say as follows:

1. I am over the age of eighteen (18) and competent to testify as to the matters set forth herein.
2. I am an Associate Professor in the Department of Political Science at the University of Michigan, Ann Arbor. I am also a Research Associate Professor at the Center for Political Studies of the Institute for Social Research at the University of Michigan and a Research Associate at the Spatial Social Science Laboratory at Stanford University. In 2007, I received a M.S. in Statistics from Stanford University, and in 2009, I received a Ph.D. in Political Science from Stanford University.
3. I have published academic papers on legislative districting and political geography in several political science journals, including The American Journal of Political Science and The American Political Science Review, and Election Law Journal. My academic areas of expertise include legislative elections, spatial statistics, geographic information systems

(GIS) data, redistricting, racial politics, legislatures, and political geography. I have expertise in the use of computer simulations of legislative districting and in analyzing political geography, elections, and redistricting.

4. I have authored expert reports in the following redistricting court cases: *The League of Women Voters of Florida v. Detzner* (Fla. 2d Judicial Cir. Leon Cnty. 2012); *Romo v. Detzner* (Fla. 2d Judicial Cir. Leon Cnty. 2013); *Missouri National Association for the Advancement of Colored People v. Ferguson-Florissant School District & St. Louis County Board of Election Commissioners* (E.D. Mo. 2014); *Raleigh Wake Citizens Association v. Wake County Board of Elections* (E.D.N.C. 2015); *Brown v. Detzner* (N.D. Fla. 2015); *City of Greensboro v. Guilford County Board of Elections* (M.D.N.C. 2015); *Common Cause v. Rucho* (M.D.N.C. 2016); *The League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania* (No. 261 M.D. 2017); *Georgia State Conference of the NAACP v. The State of Georgia* (N.D. Ga. 2017); *The League of Women Voters of Michigan v. Johnson* (E.D. Mich. 2017); *Whitford v. Gill* (W.D. Wis. 2018); *Common Cause v. Lewis* (N.C. Super. 2018); *Harper v. Lewis* (N.C. Super. 2019); *Baroody v. City of Quincy, Florida* (N.D. Fla. 2020); *McConchie v. Illinois State Board of Elections* (N.D. Ill. 2021). I have testified either at deposition or at trial in the following cases: *Romo v. Detzner* (Fla. 2d Judicial Cir. Leon Cnty. 2013); *Missouri National Association for the Advancement of Colored People v. Ferguson-Florissant School District & St. Louis County Board of Election Commissioners* (E.D. Mo. 2014); *Raleigh Wake Citizens Association v. Wake County Board of Elections* (E.D.N.C. 2015); *City of Greensboro v. Guilford County Board of Elections* (M.D.N.C. 2015); *Common Cause v. Rucho* (M.D.N.C. 2016); *The League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania* (No. 261 M.D. 2017); *Georgia State Conference of the NAACP v. The State of Georgia* (N.D. Ga. 2017); *The*

League of Women Voters of Michigan v. Johnson (E.D. Mich. 2017); *Whitford v. Gill* (W.D. Wis. 2018); *Common Cause v. Lewis* (N.C. Super. 2018); *Baroody v. City of Quincy, Florida* (N.D. Fla. 2020).

5. I have been retained by Plaintiffs in the above-captioned matter. I am being compensated \$550 per hour for my work in this case.

6. Plaintiffs’ counsel asked me to analyze the SB 740 districting plan for North Carolina’s congressional districts (the “Enacted Plan”), as passed on November 4, 2021. Plaintiffs’ counsel asked me to produce a set of computer-simulated plans for North Carolina’s congressional districts by following the criteria adopted by the North Carolina General Assembly’s Joint Redistricting Committee on August 12, 2021 (the “Adopted Criteria”). Plaintiffs’ counsel asked me to compare the district-level partisan attributes of the Enacted Plan to those of the computer-simulated plans and to identify any districts in the Enacted Plan that are partisan outliers. Plaintiffs’ counsel also asked me to compare the partisan composition of the individual Plaintiffs’ congressional districts under the Enacted Plan to the partisan composition of Plaintiffs’ districts under the computer-simulated plans and to identify any Plaintiffs whose Enacted Plan districts are partisan outliers.

7. ***The Use of Computer-Simulated Districting Plans:*** In conducting my academic research on legislative districting, partisan and racial gerrymandering, and electoral bias, I have developed various computer simulation programming techniques that allow me to produce a large number of nonpartisan districting plans that adhere to traditional districting criteria using US Census geographies as building blocks. This simulation process ignores all partisan and racial considerations when drawing districts. Instead, the computer simulations are programmed to draw districting plans following various traditional districting goals, such as equalizing

population, avoiding county and Voting Tabulation District (VTD) splits, and pursuing geographic compactness. By randomly generating a large number of districting plans that closely adhere to these traditional districting criteria, I am able to assess an enacted plan drawn by a state legislature and determine whether partisan goals motivated the legislature to deviate from these traditional districting criteria. More specifically, by holding constant the application of nonpartisan, traditional districting criteria through the simulations, I am able to determine whether the enacted plan could have been the product of something other than partisan considerations. With respect to North Carolina's 2021 Congressional Enacted Plan, I determined that it could not.

8. I produced a set of 1,000 valid computer-simulated plans for North Carolina's congressional districts using a computer algorithm programmed to strictly follow the required districting criteria enumerated in the August 12, 2021 Adopted Criteria of the General Assembly's Joint Redistricting Committee. In following these Adopted Criteria, the computer algorithm uses the same general approach that I employed in creating the simulated state House and state Senate plans that I analyzed in *Common Cause v. Lewis* (2019) and the simulated congressional plans that I used in *Harper v. Lewis* (2019).

9. By randomly drawing districting plans with a process designed to strictly follow nonpartisan districting criteria, the computer simulation process gives us an indication of the range of districting plans that plausibly and likely emerge when map-drawers are not motivated primarily by partisan goals. By comparing the Enacted Plan against the distribution of simulated plans with respect to partisan measurements, I am able to determine the extent to which a map-drawer's subordination of nonpartisan districting criteria, such as geographic compactness and preserving precinct boundaries, was motivated by partisan goals.

10. These computer simulation methods are widely used by academic scholars to analyze districting maps. For over a decade, political scientists have used such computer-simulated districting techniques to analyze the racial and partisan intent of legislative map-drawers.¹ In recent years, several courts have also relied upon computer simulations to assess partisan bias in enacted districting plans.²

11. ***Redistricting Criteria:*** I programmed the computer algorithm to create 1,000 independent simulated plans adhering to the following the seven districting criteria, as specified in the Adopted Criteria:

- a) Population Equality: Because North Carolina’s 2020 Census population was 10,439,388, districts in every 14-member congressional plan have an ideal population of 745,670.6. Accordingly, the computer simulation algorithm populated each districting plan such that precisely six districts have a population of 745,670, while the remaining eight districts have a population of 745,671.
- b) Contiguity: The simulation algorithm required districts to be geographically contiguous. Water contiguity is permissible. I also programmed the simulation algorithm to avoid double-traversals within a single county. In other words, for every simulated district, the portion of that district within any given county will be geographically contiguous.

¹ E.g., Carmen Cirincione, Thomas A. Darling, Timothy G. O’Rourke. "Assessing South Carolina’s 1990s Congressional Districting," *Political Geography* 19 (2000) 189–211; Jowei Chen, “The Impact of Political Geography on Wisconsin Redistricting: An Analysis of Wisconsin’s Act 43 Assembly Districting Plan.” *Election Law Journal*

² See, e.g., *League of Women Voters of Pa. v. Commonwealth*, 178 A. 3d 737, 818-21 (Pa. 2018); *Raleigh Wake Citizens Association v. Wake County Board of Elections*, 827 F.3d 333, 344-45 (4th Cir. 2016); *City of Greensboro v. Guilford County Board of Elections*, No. 1:15-CV-599, 2017 WL 1229736 (M.D.N.C. Apr 3, 2017); *Common Cause v. Rucho*, No. 1:16-CV-1164 (M.D.N.C. Jan 11, 2018); *The League of Women Voters of Michigan v. Johnson* (E.D. Mich. 2017); *Common Cause v. David Lewis* (N.C. Super. 2018).

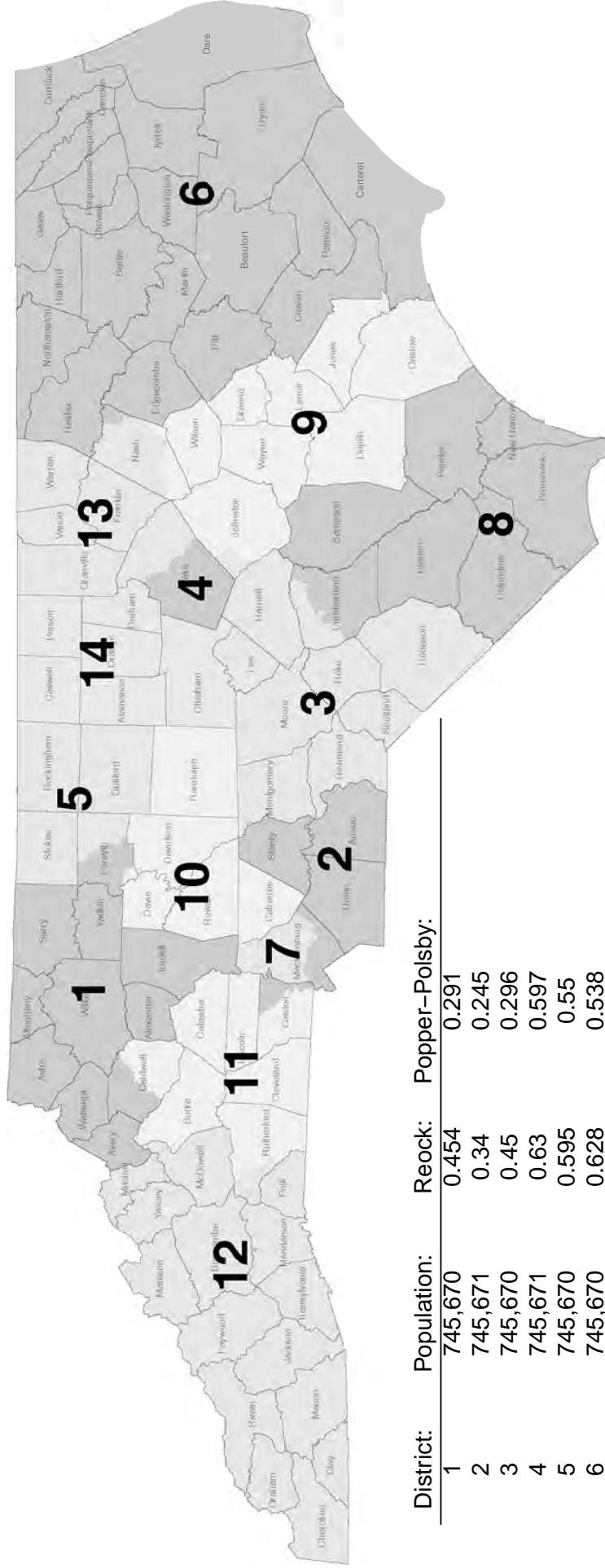
- c) Minimizing County Splits: The simulation algorithm avoided splitting any of North Carolina's 100 counties, except when doing so is necessary to avoid violating one of the aforementioned criteria. When a county is divided into two districts, the county is considered to have one split. A county divided into three districts is considered to have two splits. A county divided into four districts is considered to have three splits, and so on. For the purpose of creating equally populated districts, each newly drawn congressional district requires only one county split. But the fourteenth and final district drawn in North Carolina does need not create an additional county split, since this final district should simply be the remaining area unassigned to the first thirteen districts. Therefore, an entire plan of 14 congressional districts requires only 13 county splits. Accordingly, I require that every simulated plan contain only 13 county splits. The 2021 Adopted Criteria do not prohibit splitting a county more than once, so I allow some of these 13 county splits to occur within the same county. As a result, the total number of counties containing one or more splits may be fewer than 13.
- d) Minimizing VTD Splits: North Carolina is divided into 2,666 VTDs. The computer simulation algorithm attempted to keep these VTDs intact and not split them into multiple districts, except when doing so is necessary for creating equally populated districts. For the purpose of creating equally populated districts, each newly drawn congressional district requires one VTD split. But the fourteenth and final district drawn in North Carolina does need not create an additional VTD split, since this final district should simply be the remaining area unassigned to the first thirteen districts. Therefore, an entire plan of 14

congressional districts requires only 13 VTD splits. I therefore require that every simulated plan split only 13 VTDs in total.

- e) Geographic Compactness: The simulation algorithm prioritized the drawing of geographically compact districts whenever doing so does not violate any of the aforementioned criteria.
- f) Avoiding Incumbent Pairings: North Carolina’s current congressional delegation includes two incumbents, Representatives Ted Budd and David Price, who announced before the Enacted Plan was adopted that they will not run for reelection in 2022. For the remaining eleven congressional incumbents, the simulation algorithm intentionally avoids pairing multiple incumbents in the same district. Hence, in every computer-simulated plan, each district contains no more than one incumbent’s residence.
- g) Municipal Boundaries: The simulation algorithm generally favors not splitting municipalities, but this consideration is given lower priority than all of the aforementioned criteria. For example, the algorithm would not intentionally split a VTD in order to preserve a municipality, as the Adopted Criteria clearly prioritizes VTD preservation over municipal boundaries.

12. On the following page of this report, Map 1 displays an example of one of the computer-simulated plans produced by the computer algorithm. The lower half of this Map also reports the population of each district, the compactness scores for each district, and the county splits and VTD splits created by the plan. As with every simulated plan, this plan contains exactly 13 VTD splits and 13 county splits, with 11 counties split into two or more districts.

Map 1:
Example of a Computer-Simulated Congressional Plan Protecting all 11 Incumbents



District: Population: Reock: Popper-Polsby:

1	745,670	0.454	0.291
2	745,671	0.34	0.245
3	745,670	0.45	0.296
4	745,671	0.63	0.597
5	745,670	0.595	0.55
6	745,670	0.628	0.538
7	745,671	0.555	0.44
8	745,671	0.555	0.402
9	745,671	0.494	0.345
10	745,671	0.527	0.535
11	745,670	0.592	0.295
12	745,671	0.354	0.313
13	745,671	0.629	0.396
14	745,670	0.513	0.439
Plan Average:	745,670.6	0.523	0.406

11 Split Counties:

- Caldwell (Districts 1, 11)
- Cumberland (Districts 3, 8)
- Durham (Districts 13, 14)
- Forsyth (Districts 1, 10, 5)
- Gaston (Districts 11, 2)
- Guilford (Districts 14, 5)
- Johnston (Districts 3, 9)
- Mecklenburg (Districts 2, 7)
- Nash (Districts 13, 6, 9)
- Rutherford (Districts 11, 12)
- Wake (Districts 13, 4)

13 Split VTD's:

- VTD 00PR32 in Caldwell County (Districts 1 and 11)
- VTD 00CC17 in Cumberland County (Districts 3 and 8)
- VTD 055-11 in Durham County (Districts 13 and 14)
- VTD 000051 in Forsyth County (Districts 1 and 10)
- VTD 000301 in Forsyth County (Districts 1 and 5)
- VTD 000025 in Gaston County (Districts 11 and 2)
- VTD 000PG1 in Guilford County (Districts 14 and 5)
- VTD 00PR33 in Johnston County (Districts 3 and 9)
- VTD 000216 in Mecklenburg County (Districts 2 and 7)
- VTD 00P16A in Nash County (Districts 13 and 6)
- VTD 00P22A in Nash County (Districts 13 and 9)
- VTD 000018 in Rutherford County (Districts 11 and 12)
- VTD 001-36 in Wake County (Districts 13 and 4)

The Enacted Plan’s Compliance with the Adopted Criteria:

13. Although all seven of the criteria listed above are part of the General Assembly’s Adopted Criteria, five of these criteria are ones that the Joint Redistricting Committee “shall” or “should” follow in the process of drawing its Congressional districting plan. These five mandated criteria are: equal population; contiguity, minimizing county splits, minimizing VTD splits, and geographic compactness.³

14. I assessed whether the 2021 Enacted Plan complies with these five mandated criteria, and I describe my findings in this section. I found that the Enacted Plan does not violate the equal population requirement, nor do any of its districts violate contiguity.

15. However, by comparing the Enacted Plan to the 1,000 computer-simulated plans, I found that the Enacted Plan fails to minimize county splits, fails to minimize VTD splits, and is significantly less geographically compact than is reasonably possible. I describe these findings below in detail.

16. ***Minimizing County Splits:*** In comparing the total number of county splits in the Enacted Plan and in the computer-simulated plans, I counted the total number of times a county is split into more than one district. Specifically, a county fully contained within a single district counts as zero splits. A county split into two full or partial districts counts as one split. And a county split into three full or partial districts counts as two splits. And so on.

17. Using this standard method of accounting for total county splits, I found that the Enacted Plan contains 14 total county splits, which are detailed in Table 1. These 14 total county splits are spread across 11 counties. Eight of these 11 counties are split only once, but Guilford,

³ In listing these five mandated criteria, I am not including the Adopted Criteria’s prohibitions on the use of racial data, partisan considerations, and election results data. I did not assess whether the Enacted Plan complies with the prohibition on racial considerations.

Mecklenburg, and Wake Counties are each split into three districts, thus accounting for two splits each. Thus, the Enacted Plan has 14 total county splits, as listed in Table 1.

Table 1: Total Number of County Splits in the 2021 Enacted Plan

	County:	Congressional Districts:	Total County Splits:
1	Davidson	7 and 10	1
2	Guilford	7, 10, and 11	2
3	Harnett	4 and 7	1
4	Iredell	10 and 12	1
5	Mecklenburg	8, 9, and 13	2
6	Onslow	1 and 3	1
7	Pitt	1 and 2	1
8	Robeson	3 and 8	1
9	Wake	5, 6, and 7	2
10	Watauga	11 and 14	1
11	Wayne	2 and 4	1
Total County Splits:			14

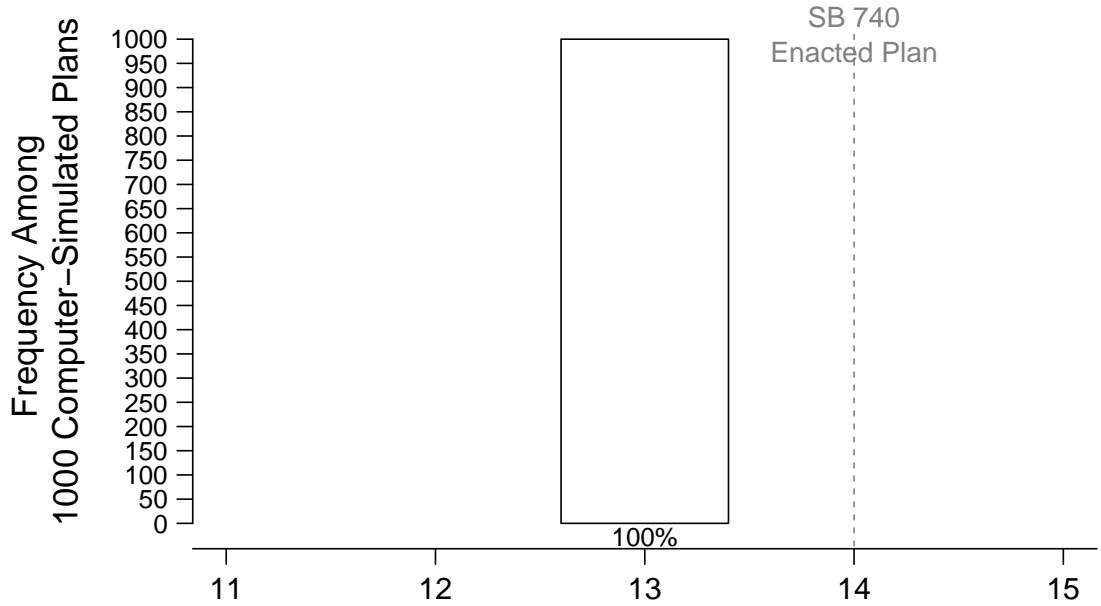
18. As explained in the previous section, a congressional plan in North Carolina needs to contain only 13 county splits if the map-drawer is attempting to minimize the splitting of counties. The Enacted Plan’s 14 county splits is therefore one more split than is necessary. This “extra” split is specifically found at the border between District 7 and District 10. In general, the border between any two congressional districts in North Carolina needs to split only one county, at most. But in the Enacted Plan, the border between Districts 7 and 10 creates two county splits: One split of Davidson County and one split of Guilford County. Creating two county splits of Davidson and Guilford Counties was not necessary for equalizing district populations. Nor was it necessary for protecting incumbents, as no incumbents reside in the

portions of Davidson and Guilford Counties within District 7 and District 10. Hence, the “extra” county split in Davidson and Guilford Counties does not appear to be consistent with the 2021 Adopted Criteria, which mandate that “Division of counties in the 2021 Congressional plan shall only be made for reasons of equalizing population and consideration of double bunking.”

19. Indeed, I found that the computer simulation algorithm was always able to draw districts complying with the Adopted Criteria without using an “extra” 14th county split. As the upper half of Figure 1 illustrates, all 1,000 computer-simulated plans contain exactly 13 county splits. The Enacted Plan clearly contains more county splits than one would expect from a map-drawing process complying with the Adopted Criteria. Therefore, I conclude that the Enacted Plan does not comply with the Adopted Criteria’s rule against unnecessary division of counties.

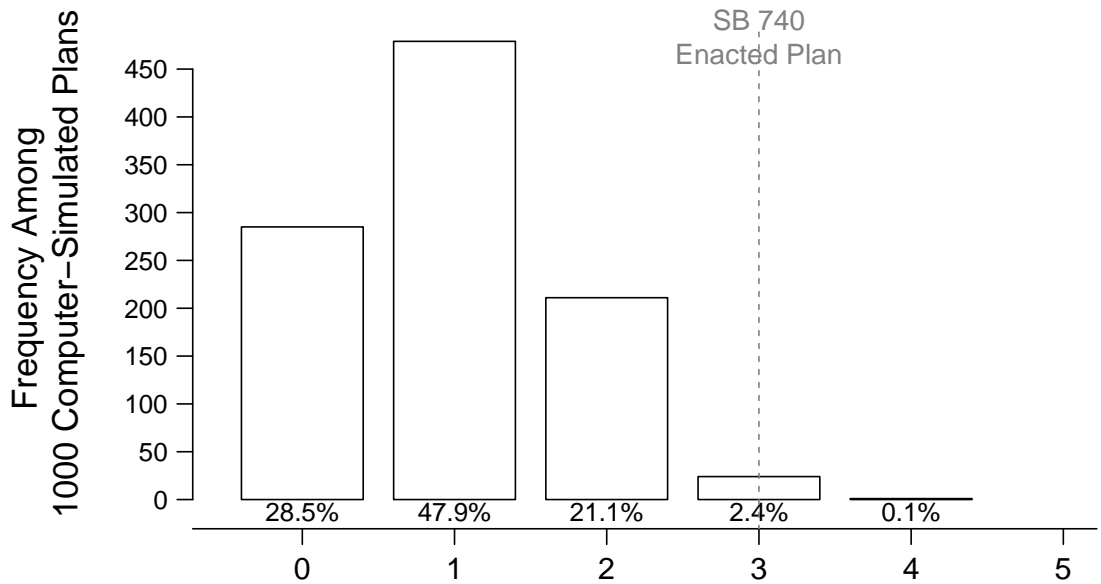
20. The Adopted Criteria do not explicitly limit the number of county splits within any single county. Nevertheless, it is notable that under the Enacted Plan, three different counties (Guilford, Mecklenburg, and Wake) are split multiple times. These three counties are each split into three districts under the Enacted Plan. This is an outcome that rarely occurs under the computer-simulated plans. As the lower half of Figure 1 illustrates, only 2.5% of the computer-simulated plans similarly split three or more counties multiple times. Thus, it is clear that the Enacted Plan’s level of concentrating multiple county splits within a single county is an outcome that generally does not occur in a vast majority of the simulated plans drawn according to the Adopted Criteria.

Figure 1:
Comparison of Total County Splits in Enacted SB 740 Plan and 1,000 Computer–Simulated Plans



Total Number of County Splits in Each Congressional Plan
(Counting Multiple Splits in Counties Divided into Three or More Districts)

**Number of Counties Split Multiple Times
in Enacted SB 740 Plan and 1,000 Computer–Simulated Plans**



Number of Counties Split into Three or More Districts
Within in Each Congressional Plan

21. **Minimizing VTD Splits:** The Adopted Criteria mandates that “Voting districts (“VTDs”) should be split only when necessary.” As explained earlier in this report, each newly drawn congressional district needs to create only one VTD split for the purpose of equalizing the district’s population. But the fourteenth and final district drawn in North Carolina does need not create an additional VTD split, since this final district should simply be the remaining area unassigned to the first thirteen districts. Therefore, an entire plan of 14 congressional districts needs to create only 13 VTD splits.

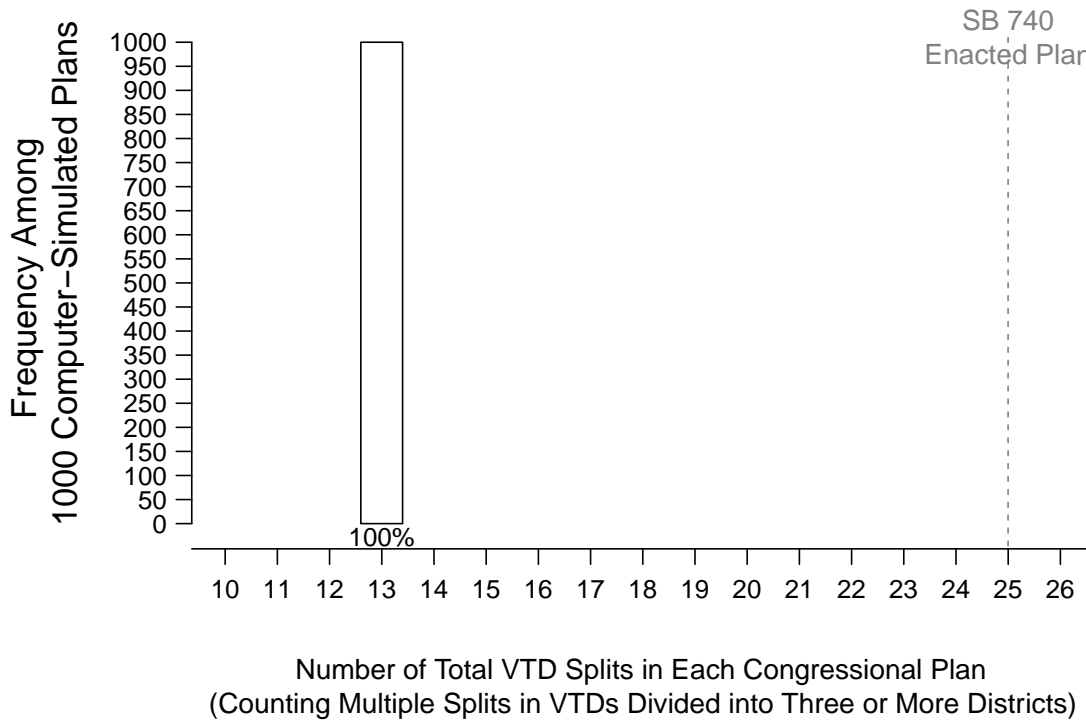
22. However, the Enacted Plan creates far more VTD splits than is necessary. As the General Assembly’s “StatPack” Report⁴ for the Enacted SB 740 Plan details, the Enacted plan splits 24 VTDs into multiple districts. Among these 24 split VTDs, 23 VTDs are split into two districts, while one VTD (Wake County VTD 18-02) is split into three districts. Thus, using the same method of accounting for splits described earlier, the Enacted Plan contains 25 total VTD splits, and 24 VTDs are split into two or more districts.

23. The Enacted Plan’s 25 total VTD splits is far more than is necessary to comply with the Adopted Criteria’s equal population requirement. As explained earlier, only 13 VTD splits are necessary in order to produce an equally-populated congressional plan in North Carolina. Thus, as Figure 2 illustrates, every one of the 1,000 computer-simulated plans contains exactly 13 VTD splits, and the Enacted Plan’s 25 total VTD splits is clearly not consistent with the Adopted Criteria’s requirement that “Voting districts (‘VTDs’) should be split only when necessary.”

⁴ Available at:
<https://webservices.ncleg.gov/ViewBillDocument/2021/53447/0/SL%202021-174%20-%20StatPack%20Report>.

Figure 2:

Comparison of Total VTD Splits in Enacted SB 740 Plan and 1,000 Computer–Simulated Plans



24. ***Measuring Geographic Compactness:*** The August 12, 2021 Adopted Criteria mandates that the Joint Redistricting Committee “shall” attempt to draw geographically compact congressional districts. The Adopted Criteria also specify two commonly used measures of district compactness: the Reock score and the Polsby-Popper score.

25. In evaluating whether the Enacted Plan follows the compactness requirement of the Adopted Criteria, it is useful to compare the compactness of the Enacted Plan and the 1,000 computer-simulated plans. The computer-simulated plans were produced by a computer algorithm adhering strictly to the traditional districting criteria mandated by the Adopted Criteria and ignoring any partisan or racial considerations. Thus, the compactness scores of these computer-simulated plans illustrate the statistical range of compactness scores that could be

reasonably expected to emerge from a districting process that solely seeks to follow the Adopted Criteria while ignoring partisan and racial considerations. I therefore compare the compactness of the simulated plans and the Enacted Plan using the two measures of compactness specified by the 2021 Adopted Criteria.

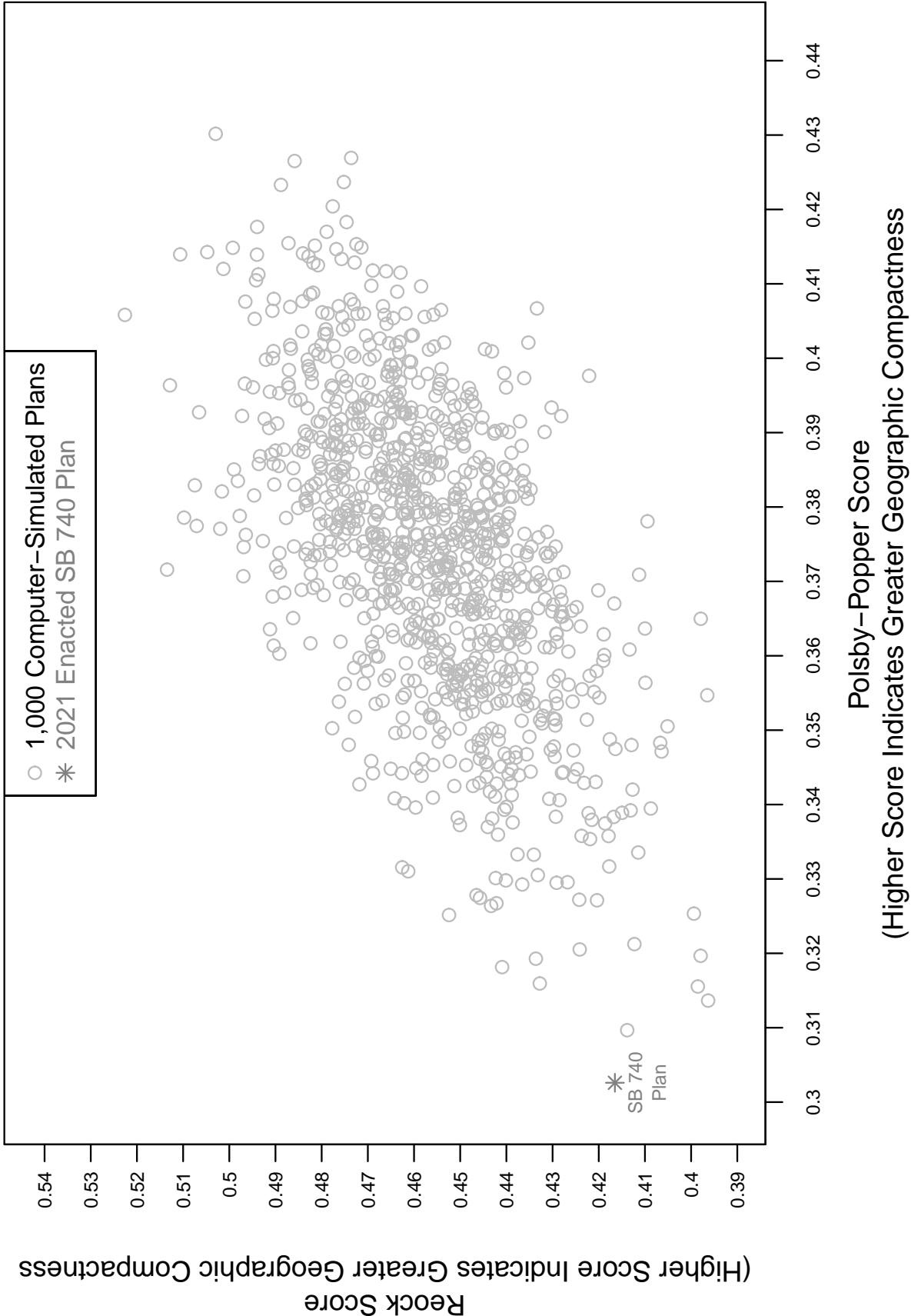
26. First, I calculate the average Polsby-Popper score of each plan's districts. The Polsby-Popper score for each individual district is calculated as the ratio of the district's area to the area of a hypothetical circle whose circumference is identical to the length of the district's perimeter; thus, higher Polsby-Popper scores indicate greater district compactness. The 2021 Enacted Plan has an average Polsby-Popper score of 0.3026 across its 14 congressional districts. As illustrated in Figure 3, every single one of the 1,000 computer-simulated House plans in this report exhibits a higher Polsby-Popper score than the Enacted Plan. In fact, the middle 50% of these 1,000 computer-simulated plans have an average Polsby-Popper score ranging from 0.36 to 0.39, and the most compact computer-simulated plan has a Polsby-Popper score of 0.43. Hence, it is clear that the Enacted Plan is significantly less compact, as measured by its Polsby-Popper score, than what could reasonably have been expected from a districting process adhering to the Adopted Criteria.

27. Second, I calculate the average Reock score of the districts within each plan. The Reock score for each individual district is calculated as the ratio of the district's area to the area of the smallest bounding circle that can be drawn to completely contain the district; thus, higher Reock score indicate more geographically compact districts. The 2021 Enacted Plan has an average Reock score of 0.4165 across its 14 congressional districts. As illustrated in Figure 3, 97.7% of the 1,000 computer-simulated plans exhibit a higher Reock score than the Enacted Plan. In fact, the middle 50% of these 1,000 computer-simulated plans have an average Reock

score ranging from 0.44 to 0.47, and the most compact computer-simulated plan has an average Reock score of 0.52. Hence, it is clear that the Enacted Plan is significantly less compact, as measured by its Reock score, than what could reasonably have been expected from a districting process adhering to the Adopted Criteria.

Figure 3:

**Comparisons of Enacted SB 740 Plan to 1,000 Computer–Simulated Plans
on Polsby–Popper and Reock Compactness Scores**



Measuring the Partisanship of Districting Plans

28. In general, I use actual election results from recent, statewide election races in North Carolina to assess the partisan performance of the Enacted Plan and the computer-simulated plans analyzed in this report. Overlaying these past election results onto a districting plan enables me to calculate the Republican (or Democratic) share of the votes cast from within each district in the Enacted Plan and in each simulated plan. I am also able to count the total number of Republican and Democratic-leaning districts within each simulated plan and within the Enacted Plan. All of these calculations thus allow me to directly compare the partisanship of the Enacted Plan and the simulated plans. These partisan comparisons allow me to determine whether or not the partisanship of individual districts and the partisan distribution of seats in the Enacted Plan could reasonably have arisen from a districting process adhering to the Adopted Criteria and its explicit prohibition on partisan considerations. Past voting history in federal and statewide elections is a strong predictor of future voting history. Mapmakers thus can and do use past voting history to identify the class of voters, at a precinct-by-precinct level, who are likely to vote for Republican or Democratic congressional candidates.

29. In the 2011, 2016, and 2017 rounds of state legislative and congressional redistricting last decade, the North Carolina General Assembly publicly disclosed that it was relying solely on recent statewide elections in measuring the partisanship of the districting plans being created. I therefore follow the General Assembly's past practice from last decade by using results from a similar set of recent statewide elections in order to measure the partisanship of districts in the Enacted Plan and in the computer-simulated plans.

30. ***The 2016-2020 Statewide Election Composite:*** During the General Assembly's 2017 legislative redistricting process, Representative David Lewis announced at the Joint

Redistricting Committee’s August 10, 2017 meeting that the General Assembly would measure the partisanship of legislative districts using the results from some of the most recent elections held in North Carolina for the following five offices: US President, US Senator, Governor, Lieutenant Governor, and Attorney General.

31. To measure the partisanship of all districts in the computer-simulated plans and the 2021 Enacted Plan, I used the two most-recent election contests held in North Carolina for these same five offices during 2016-2020. In other words, I used the results of the following ten elections: 2016 US President, 2016 US Senator, 2016 Governor, 2016 Lieutenant Governor, 2016 Attorney General, 2020 US President, 2020 US Senator, 2020 Governor, 2020 Lieutenant Governor, and 2020 Attorney General. I use these election results because these are the same state and federal offices whose election results were used by the General Assembly during its 2017 legislative redistricting process, and the 2017 redistricting process was the most recent one in which the leadership of the General Assembly’s redistricting committees publicly announced how the General Assembly would evaluate the partisanship of its own districting plans.

32. I obtained precinct-level results for these ten elections, and I disaggregated these election results down to the census block level. I then aggregated these block-level election results to the district level within each computer-simulated plan and the Enacted Plan, and I calculated the number of districts within each plan that cast more votes for Republican than Democratic candidates. I use these calculations to measure the partisan performance of each simulated plan analyzed in this report and of the Enacted Plan. In other words, I look at the census blocks that would comprise a particular district in a given simulation and, using the actual election results from those census blocks, I calculate whether voters in that simulated district collectively cast more votes for Republican or Democratic candidates in the 2016-2020 statewide

election contests. I performed such calculations for each district under each simulated plan to measure the number of districts Democrats or Republicans would win under that particular simulated districting map.

33. I refer to the aggregated election results from these ten statewide elections as the “2016-2020 Statewide Election Composite.” For the Enacted Plan districts and for all districts in each of the 1,000 computer-simulated plans, I calculate the percentage of total two-party votes across these ten elections that were cast in favor of Republican candidates in order to measure the average Republican vote share of the district. In the following section, I present district-level comparisons of the Enacted Plan and simulated plan districts in order to identify whether any individual districts in the Enacted Plan are partisan outliers. I also present plan-wide comparisons of the Enacted Plan and the simulated plans in order to identify the extent to which the Enacted Plan is a statistical outlier in terms of common measures of districting plan partisanship.

District-Level and Plan-Wide Partisan Comparisons of the Enacted Plan and Simulated Plans

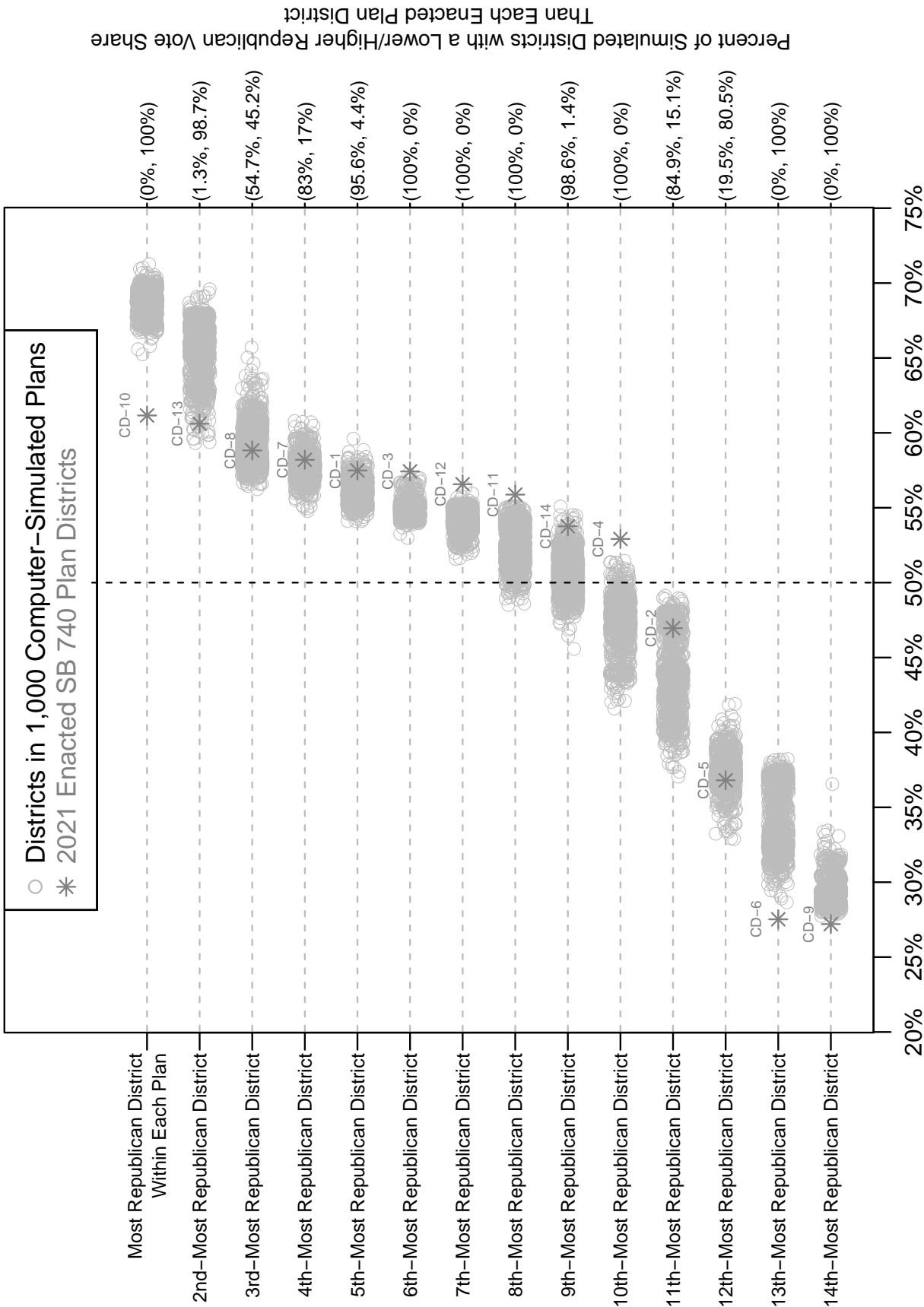
34. In this section, I present partisan comparisons of the Enacted Plan to the computer-simulated plans at both a district-by-district level as well as a plan-wide level using several common measures of districting plan partisanship. First, I compare the district-level Republican vote share of the Enacted Plan's districts and the districts in the computer-simulated plans. Next, I compare the number of Republican-favoring districts in the Enacted Plan and in the computer-simulated plans. Finally, I use several common measures of partisan bias to compare the Enacted Plan to the computer-simulated plans. Overall, I find that the several individual districts in the Enacted Plan are statistical outliers, exhibiting extreme partisan characteristics that are rarely or never observed in the computer-simulated plan districts drawn with strict adherence to the Adopted Criteria. Moreover, I find that at the plan-wide level, the Enacted Plan creates a degree of partisan bias favoring Republicans that is more extreme than the vast majority of the computer-simulated plans. I describe these findings in detail below:

35. ***Partisan Outlier Districts in the Enacted Plan:*** In Figure 4, I directly compare the partisan distribution of districts in the Enacted Plan to the partisan distribution of districts in the 1,000 computer-simulated plans. I first order the Enacted Plan's districts from the most to the least-Republican district, as measured by Republican vote share using the 2016-2020 Statewide Election Composite. The most-Republican district appears on the top row, and the least-Republican district appears on the bottom row of Figure 4. Next, I analyze each of the 1,000 computer-simulated plans and similarly order each simulated plan's districts from the most- to the least-Republican district. I then directly compare the most-Republican Enacted Plan district (CD-10) to the most-Republican simulated district from each of the 1,000 computer-simulated plans. In other words, I compare one district from the Enacted Plan to 1,000 computer-simulated

districts, and I compare these districts based on their Republican vote share. I then directly compare the second-most-Republican district in the Enacted Plan to the second-most-Republican district from each of the 1,000 simulated plans. I conduct the same comparison for each district in the Enacted Plan, comparing the Enacted Plan district to its computer-simulated counterparts from each of the 1,000 simulated plans.

Figure 4:

Comparisons of Enacted SB 740 Plan Districts to 1,000 Computer-Simulated Plans' Districts



District's Republican Vote Share Measured Using the 2016–2020 Statewide Election Composite
(50.8% Statewide Republican 2-Party Vote Share)

36. Thus, the top row of Figure 4 directly compares the partisanship of the most-Republican Enacted Plan district (CD-10) to the partisanship of the most-Republican district from each of the 1,000 simulated plans. The two percentages (in parentheses) in the right margin of this Figure report the percentage of these 1,000 simulated districts that are less Republican than, and more Republican than, the Enacted plan district. Similarly, the second row of this Figure compares the second-most-Republican district from each plan, the third row compares the third-most-Republican district from each plan, and so on. In each row of this Figure, the Enacted Plan's district is depicted with a red star and labeled in red with its district number; meanwhile, the 1,000 computer-simulated districts are depicted with 1,000 gray circles on each row.

37. As the bottom row of Figure 4 illustrates, the most-Democratic district in the Enacted Plan (CD-9) is more heavily Democratic than 100% of the most-Democratic districts in each of the 1,000 computer-simulated plans. This calculation is numerically reported in the right margin of the Figure. Every single one of the computer-simulated counterpart districts would have been more politically moderate than CD-9 in terms of partisanship: CD-9 exhibits a Republican vote share of 27.2%, while all 1,000 of the most-Democratic districts in the computer-simulated plans would have exhibited a higher Republican vote share and would therefore have been more politically moderate. It is thus clear that CD-9 packs together Democratic voters to a more extreme extent than the most-Democratic district in 100% of the computer-simulated plans. I therefore identify CD-9 as an extreme partisan outlier when compared to its 1,000 computer-simulated counterparts, using a standard threshold test of 95% for statistical significance.

38. The next-to-bottom row of Figure 4 reveals a similar finding regarding CD-6 in the Enacted Plan. This row illustrates that the second-most-Democratic district in the Enacted

Plan (CD-6) is more heavily Democratic than 100% of the second-most-Democratic districts in each of the 1,000 computer-simulated plans. Every single one of its computer-simulated counterpart districts would have been more politically moderate than CD-6 in terms of partisanship: CD-6 exhibits a Republican vote share of 27.5%, while 100% of the second-most-Democratic districts in the computer-simulated plans would have exhibited a higher Republican vote share and would therefore have been more politically moderate. In other words, CD-6 packs together Democratic voters to a more extreme extent than the second-most-Democratic district in 100% of the computer-simulated plans. I therefore identify CD-6 as an extreme partisan outlier when compared to its 1,000 computer-simulated counterparts, using a standard threshold test of 95% for statistical significance.

39. Meanwhile, the top two rows of Figure 4 reveal a similar finding: As the top row illustrates, the most-Republican district in the Enacted Plan (CD-10) is less heavily Republican than 100% of the most-Republican districts in each of the 1,000 computer-simulated plans. A similar pattern appears in the second-to-top row of Figure 4, which illustrates that the second-most-Republican district in the Enacted Plan (CD-13) is less heavily Republican than 98.7% of the second-most-Republican districts in each of the 1,000 computer-simulated plans.

40. It is especially notable that these four aforementioned Enacted Plan districts – the two most Republican districts (CD-10 and CD-13) and the two most Democratic districts (CD-9 and CD-6) in the Enacted Plan – were drawn to include more Democratic voters than virtually all of their counterpart districts in the 1,000 computer-simulated plans. These “extra” Democratic voters in the four most partisan-extreme districts in the Enacted Plan had to come from the remaining ten more moderate districts in the Enacted Plan. Having fewer Democratic voters in these more moderate districts enhances Republican candidate performance in these districts.

41. Indeed, the middle six rows in Figure 4 (i.e., rows 5 through 10) confirm this precise effect. The middle six rows in Figure 4 compare the partisanship of districts in the fifth, sixth, seventh, eighth, ninth, and tenth-most Republican districts within the Enacted Plan and the 1,000 computer-simulated plans. In all six of these rows, the Enacted Plan district is a partisan outlier. In each of these six rows, the Enacted Plan's district is more heavily Republican than over 95% of its counterpart districts in the 1,000 computer-simulated plans. Four of these six rows illustrate Enacted Plan districts that are more heavily Republican than 100% of their counterpart districts in the computer-simulated plans. The six Enacted Plan districts in these six middle rows (CD-1, 3, 4, 11, 12, and 14) are more heavily Republican than nearly all of their counterpart computer-simulated plan districts because the four most partisan-extreme districts in the Enacted Plan (CD-6, 9, 10, and 13) are more heavily Democratic than nearly all of their counterpart districts in the computer-simulated plans.

42. I therefore identify the six Enacted Plan districts in the six middle rows (CD-1, 3, 4, 11, 12, and 14) of Figure 4 as partisan statistical outliers. Each of these six districts has a Republican vote share that is higher than over 95% of the computer-simulated districts in its respective row in Figure 4. I also identify the four Enacted Plan districts in the top rows and the bottom two rows (CD-6, 9, 10, and 13) of Figure 4 as partisan statistical outliers. Each of these four districts has a Republican vote share that is lower than over 98% of the computer-simulated districts in its respective row in Figure 4.

43. In summary, Figure 4 illustrates that 10 of the 14 districts in the Enacted Plan are partisan outliers: Six districts (CD-1, 3, 4, 11, 12, and 14) in the Enacted Plan are more heavily Republican than over 95% of their counterpart computer-simulated plan districts, while four

districts (CD-6, 9, 10, and 13) are more heavily Democratic than over 98% of their counterpart districts in the computer-simulated plans.

44. The Appendix of this report contains ten additional Figures (Figures A1 through A10) that each contain a similar analysis of the Enacted Plan districts and the computer-simulated plan districts. Each of these ten Figures in the Appendix measures the partisanship of districts using one of the individual ten elections included in the 2016-2020 Statewide Election Composite. These ten Figures generally demonstrate that the same extreme partisan outlier patterns observed in Figure 4 are also present when district partisanship is measured using any one of the ten statewide elections held in North Carolina during 2016-2020.

45. **“Mid-Range” Republican Districts:** Collectively, the upper ten rows in Figure 4 illustrate that the Enacted Plan’s ten most-Republican districts exhibit a significantly narrower range of partisanship than is exhibited by the ten most-Republican districts in each of the computer-simulated plans. Specifically, the Enacted Plan’s ten most-Republican districts all have Republican vote shares within the narrow range of 52.9% to 61.2%. As explained earlier, this narrow range is the product of two distinct dynamics: In the top two rows of Figure 4, the Enacted Plan’s districts are significantly less Republican than nearly all of the simulated plans’ districts in these rows. But in the fifth to tenth rows of Figure 4, the Enacted Plan’s districts are more safely Republican-leaning than over 95% of the computer-simulated districts within each of these six rows. The overall result of these two distinct dynamics is that the Enacted Plan contains ten districts that all have Republican vote shares within the narrow range of 52.9% to 61.2%. I label any districts within this narrow range of partisanship as “mid-range” Republican-leaning districts, reflecting the fact that these districts have generally favored Republican candidates, but not by overwhelmingly large margins.

46. Is the Enacted Plan’s creation of ten such “mid-range” Republican-leaning districts an outcome that ever occurs in the 1,000 computer-simulated plans? I analyzed the simulated plans and counted the number of districts within each plan that are similarly “mid-range” with a Republican vote share between 52.9% and 61.2%. As Figure 5 illustrates, the Enacted Plan’s creation of ten “mid-range” Republican districts is an extreme statistical outlier. None of the 1,000 simulated plans comes close to creating ten such districts. Virtually all of the simulated plans contain from two to six “mid-range” Republican districts, and the most common outcome among the simulations is four such districts. Hence, the Enacted Plan is clearly an extreme partisan outlier in terms of its peculiar focus on maximizing the number of “mid-range” Republican districts, and the Enacted Plan did so to an extreme degree far beyond any of the 1,000 simulated plans created using a partisan-blind computer algorithm that follows the Adopted Criteria.

47. ***Competitive Districts:*** The Enacted Plan’s maximization of “mid-range” Republican districts necessarily comes at the expense of creating more competitive districts. As Figure 4 illustrates, the Enacted Plan contains zero districts whose Republican vote share is higher than 47.0% and lower than 52.9%, as measured using the 2016-2020 Statewide Election Composite. In other words, there are zero districts in which the Republican vote share is within 5% of the Democratic vote share.

48. I label districts with a Republican vote share from 47.5% to 52.5% as “competitive” districts to reflect the fact that such districts have a nearly even share of Republican and Democratic voters, and election outcomes in the district could therefore swing in favor of either party. The Enacted Plan contains zero “competitive” districts, as measured using the 2016-2020 Statewide Election Composite.

Figure 5:

**Comparisons of Enacted SB 740 Plan to 1,000 Computer–Simulated Plans
On Number of Mid–Range Republican Districts**

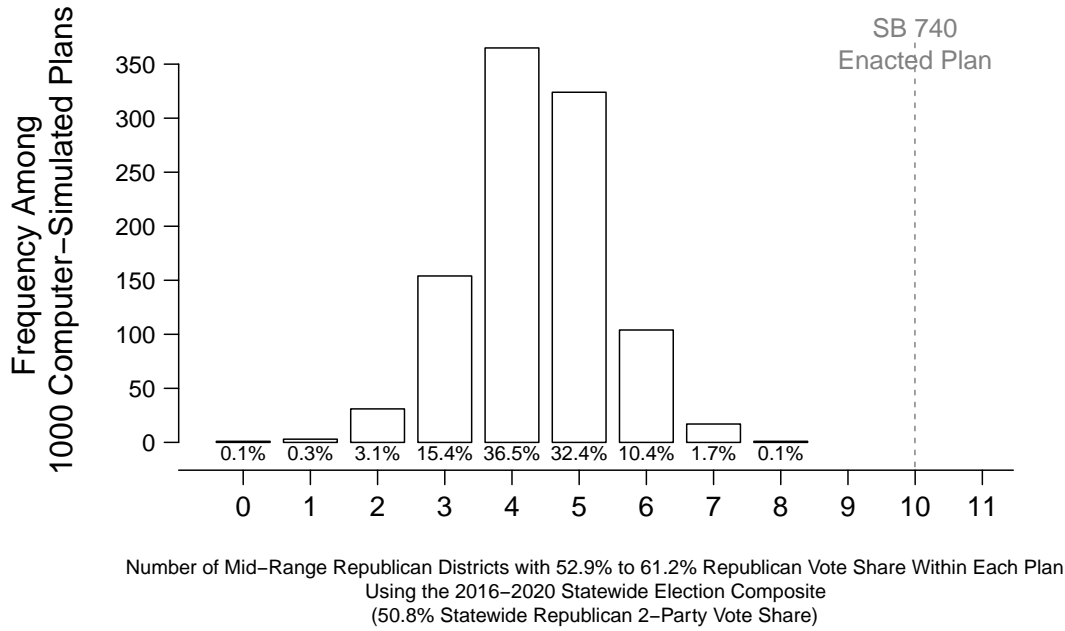
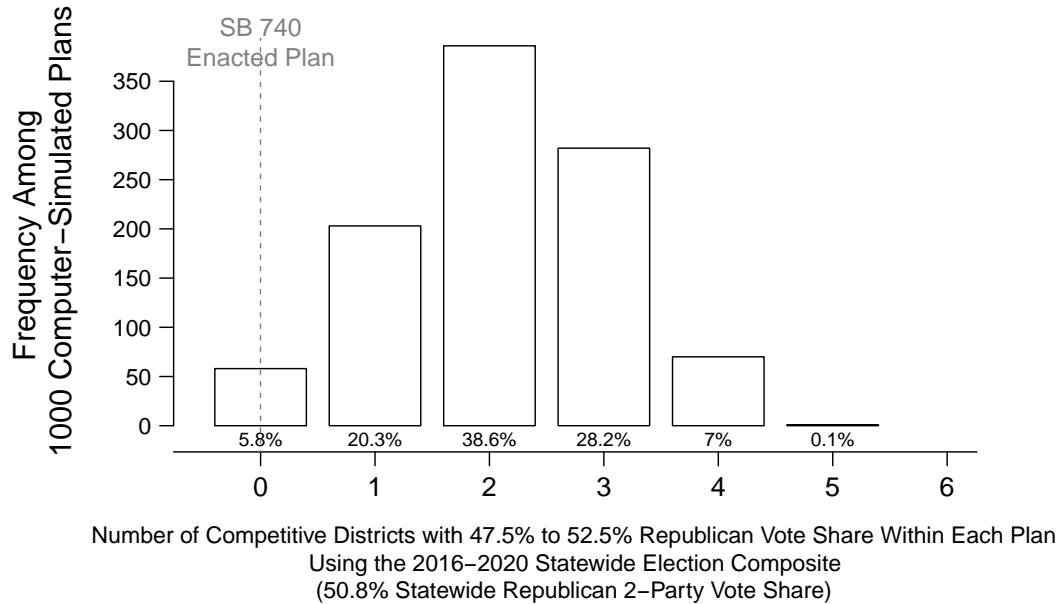


Figure 6:

**Comparisons of Enacted SB 740 Plan to 1,000 Computer–Simulated Plans
On Number of Competitive Districts**



49. Is the Enacted Plan’s failure to create any “competitive” districts an outcome that ever occurs in the 1,000 computer-simulated plans? I analyzed the simulated plans and counted the number of districts within each plan that are “competitive” districts with a Republican vote share between 47.5% and 52.5%. As Figure 6 illustrates, the Enacted Plan’s creation of zero “competitive” districts is almost a statistical outlier: Only 5.8% of the 1,000 simulated plans similarly fail to have a single “competitive” district. The vast majority of the computer-simulated plans contain two or more “competitive” districts. Over 94% of the computer-simulated plans create more “competitive” districts than the Enacted Plan does.

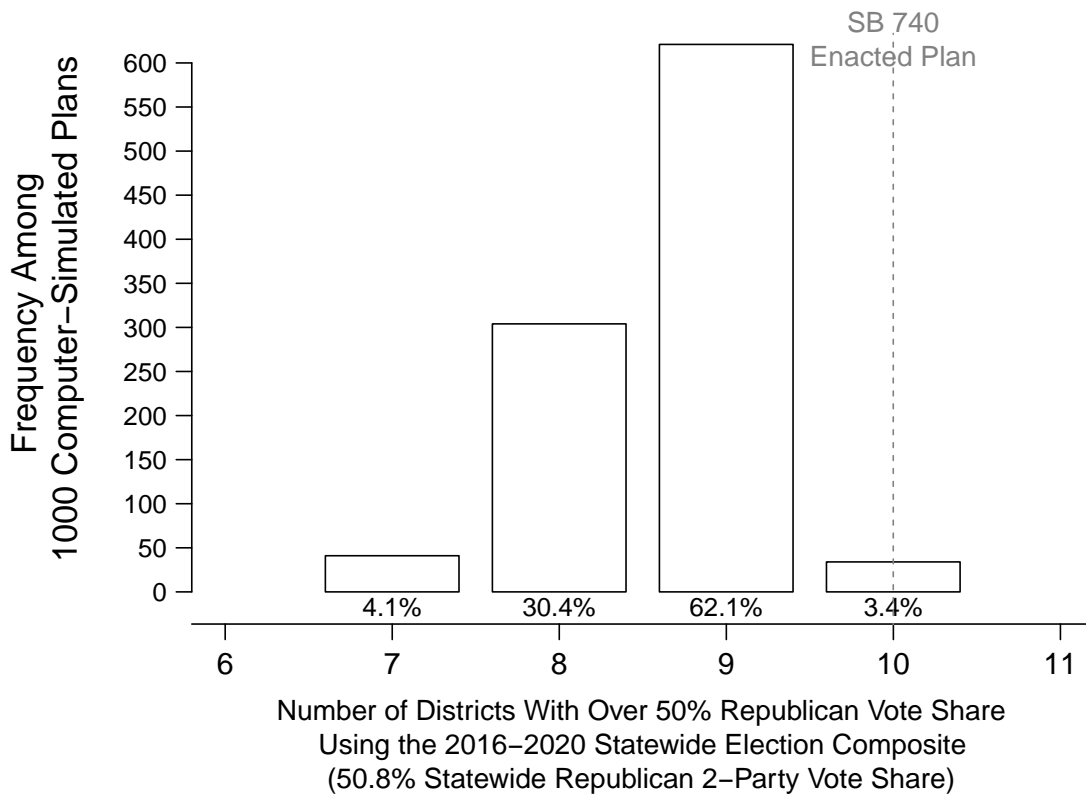
50. *Number of Democratic and Republican Districts:* Figure 7 compares the partisan breakdown of the computer-simulated plans to the partisanship of the Enacted Plan. Specifically, Figure 7 uses the 2016-2020 Statewide Election Composite to measure the number of Republican-favoring districts created in each of the 1,000 simulated plans. Across the entire state, Republican candidates collectively won a 50.8% share of the votes in the ten elections in the 2016-2020 Statewide Election Composite. But within the 14 districts in the Enacted Plan, Republicans have over a 50% vote share in 10 out of 14 districts. In other words, the Enacted Plan created 10 Republican-favoring districts, as measured using the 2016-2020 Statewide Election Composite.. By contrast, only 3.4% of the computer-simulated plans create 10 Republican-favoring districts, and no computer-simulated plan ever creates more than 10 Republican districts.

51. Hence, in terms of the total number of Republican-favoring districts created by the plan, the 2021 Enacted Plan is a statistical outlier when compared to the 1,000 computer-simulated plans. The Enacted Plan creates the maximum number of Republican districts that ever occurs in any computer-simulated plan, and the Enacted Plan creates more Republican districts

than 96.6% of the computer-simulated plans, which were drawn using a non-partisan districting process adhering to the General Assembly’s 2021 Adopted Criteria. I characterize the Enacted Plan’s creation of 10 Republican districts as a statistical outlier among the computer-simulated plans because the Enacted Plan exhibits an outcome that is more favorable to Republicans than over 95% of the simulated plans.

Figure 7:

Comparisons of Enacted SB 740 Plan to 1,000 Computer–Simulated Plans



52. Notably, the ten elections included in the Statewide Election Composite all occurred in two election years and in electoral environments that were relatively favorable to Republicans across the country (November 2016 and November 2020). North Carolina did not hold any statewide elections for non-judicial offices in November 2018, which was an electoral environment more favorable to Democrats across the country.

53. Hence, the projected number of Republican seats would be even lower in the computer-simulated plans if one measured district partisanship using a statewide election whose outcome was more partisan-balanced or even favorable to Democrats. In the Appendix, I present ten histograms (labeled as Figures B1 to B10), each presenting the projected number of Republican seats across all of the simulated plans and the Enacted Plan using only one of the ten elections in the Statewide Election Composite.

54. The ten histograms in Figures B1 to B10 illustrate how the partisanship of the Enacted Plan compares to the partisanship of the 1,000 computer-simulated plans under a range of different electoral environments, as reflected by the ten elections in the Statewide Election Composite. Most notably, under all ten of these elections, the Enacted Plan always contains exactly 10 Republican-favoring districts and 4 Democrat-favoring districts. Hence, it is clear that the Enacted Plan creates a 10-to-4 distribution of seats in favor of Republican candidates that is durable across a range of different electoral conditions.

55. Moreover, the histograms in Figures B1 to B10 demonstrate that the Enacted Plan becomes a more extreme partisan outlier relative to the computer-simulated plans under electoral conditions that are slightly to moderately favorable to the Democratic candidate. For example, Figure B1 compares the Enacted Plan to the computer-simulated plan using the results of the 2016 Attorney General election, which was a near-tied statewide contest in which Democrat Josh

Stein defeated Republican Buck Newton by a very slim margin. Using the 2016 Attorney General election to measure district partisanship, the 2021 Enacted Plan contains 10 Republican-favoring districts out of 14. The Enacted Plan’s creation of 10 districts favoring Republican Buck Newton over Democrat Josh Stein is an outcome that occurs in only 0.2% of the 1,000 computer-simulated plans, indicating that the Enacted Plan is a partisan statistical outlier under electoral conditions that are more favorable for Democrats (and thus relatively more unfavorable for Republicans) than is normal in North Carolina.

56. An even more favorable election for the Democratic candidate was the 2020 gubernatorial contest, in which Democrat Roy Cooper defeated Republican Dan Forest by a 4.5% margin. Figure B7 compares the Enacted Plan to the computer-simulated using the results of this 2020 gubernatorial election. Using the results from this election, the 2021 Enacted Plan contains 10 Republican-favoring districts out of 14. None of the 1,000 simulated plans ever contain 10 districts favoring the Republican candidate. The Enacted Plan’s creation of 10 Republican-favoring districts is therefore an extreme partisan outlier that is durable even in Democratic-favorable electoral conditions. In fact, the 10-to-4 Republican partisan advantage under the Enacted Plan appears to become even more of an extreme partisan outlier under Democratic-favorable elections.

57. ***The Mean-Median Difference:*** I also calculate each districting plan’s mean-median difference, which is another accepted method that redistricting scholars commonly use to compare the relative partisan bias of different districting plans. The mean-median difference for any given plan is calculated as the mean district-level Republican vote share, minus the median district-level Republican vote share. For any congressional districting plan, the mean is calculated as the average of the Republican vote shares in each of the 14 districts. The median, in

turn, is the Republican vote share in the district where Republican performed the middle-best, which is the district that Republican would need to win to secure a majority of the congressional delegation. For a congressional plan containing 14 districts, the median district is calculated as the average of the Republican vote share in the districts where Republican performed the 7th and 8th-best across the state.

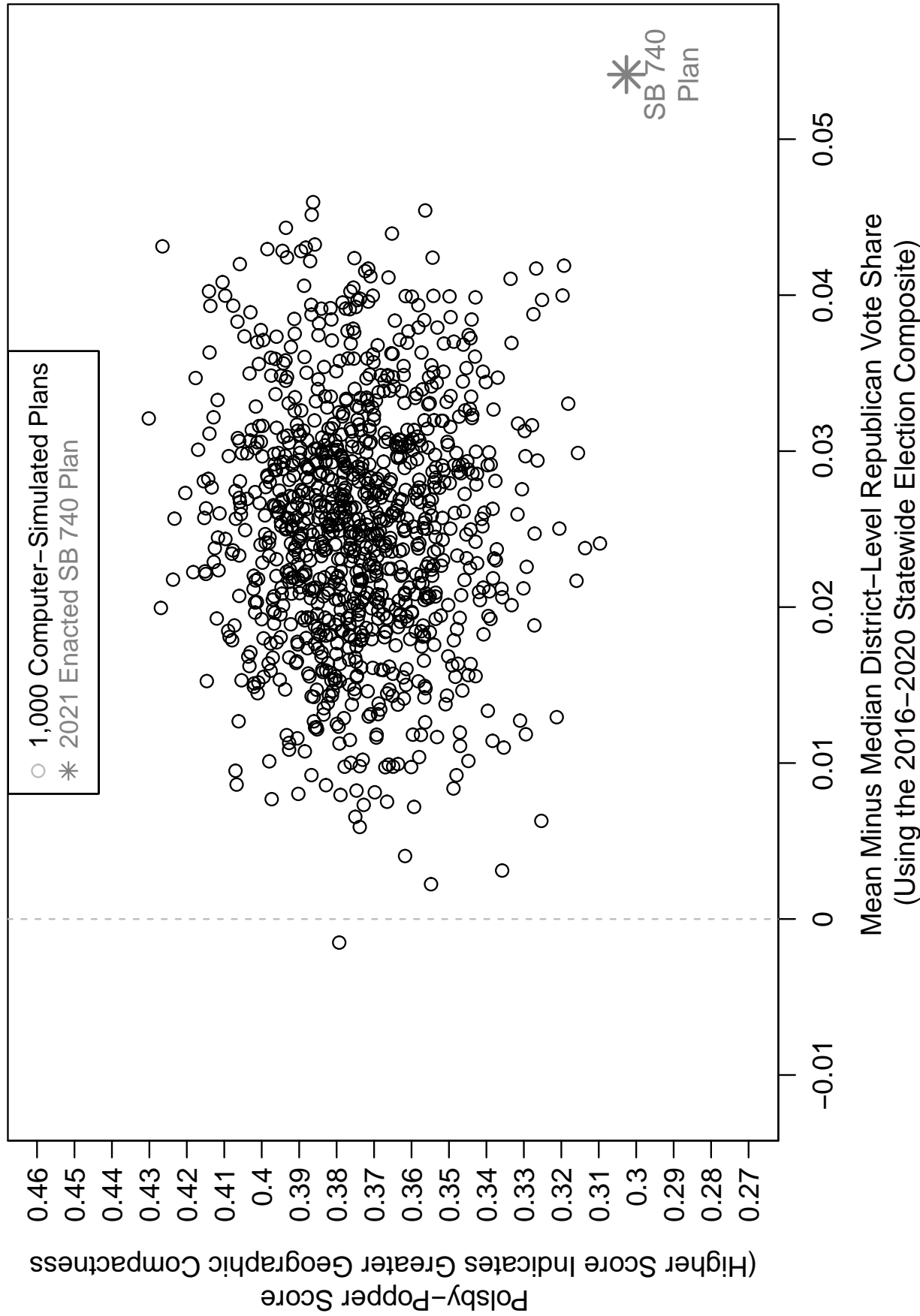
58. Using the 2016-2020 Statewide Election Composite to measure partisanship, the districts in the 2021 Enacted Plan have a mean Republican vote share of 50.8%, while the median district has a Republican vote share of 56.2%. Thus, the Enacted Plan has a mean-median difference of +5.4%, indicating that the median district is skewed significantly more Republican than the plan's average district. The mean-median difference thus indicates that the Enacted Plan distributes voters across districts in such a way that most districts are significantly more Republican-leaning than the average North Carolina congressional district, while Democratic voters are more heavily concentrated in a minority of the Enacted Plan's districts.

59. I perform this same mean-median difference calculation on all computer-simulated plans in order to determine whether this partisan skew in the median congressional districts could have resulted naturally from North Carolina's political geography and the application of the Adopted Criteria. Figure 8 compares the mean-median difference of the Enacted Plan to the mean-median difference for each the 1,000 computer-simulated plans.

60. Figure 8 contains 1,000 gray circles, representing the 1,000 computer-simulated plans, as well as a red star, representing the 2021 Enacted Plan. The horizontal axis in this Figure measures the mean-median difference of the 2021 Enacted Plan and each simulated plan using the 2016-2020 Statewide Election Composite, while the vertical axis measures the average Polsby-Popper compactness score of the districts within each plan, with higher Polsby-Popper

scores indicating more compact districts. Figure 8 illustrates that the Enacted Plan's mean-median difference is +5.4%, indicating that the median district is skewed significantly more Republican than the plan's average district. Figure 8 further indicates that this difference is an extreme statistical outlier compared to the 1,000 computer-simulated plans. Indeed, the Enacted Plan's +5.4% mean-median difference is an outcome never observed across these 1,000 simulated plans. The 1,000 simulated plans all exhibit mean-median differences that range from -0.2% to +4.6%. In fact, the middle 50% of these computer-simulated plans have mean-median differences ranging from +2.0% to +3.0%, indicating a much smaller degree of skew in the median district than occurs under the 2021 Enacted Plan. These results confirm that the Enacted Plan creates an extreme partisan outcome that cannot be explained by North Carolina's voter geography or by strict adherence to the required districting criteria set forth in the General Assembly's Adopted Criteria.

Figure 8:
**Comparisons of Enacted SB 740 Plan to 1,000 Computer-Simulated Plans
on Mean-Median Difference and Compactness**



61. Figure 8 illustrates that the Enacted Plan is less geographically compact than every single one of the computer-simulated plans, as measured by each plan’s average Polsby-Popper score. The simulated plans have Polsby-Popper scores ranging from 0.31 to 0.43. In fact, the middle 50% of these computer-simulated plans have Polsby-Popper scores ranging from 0.36 to 0.39. Meanwhile, the Enacted Plan exhibits a Polsby-Popper score of only 0.30, which is lower than all 1,000 of the computer-simulated plans. Hence, it is clear that the Enacted Plan did not seek to draw districts that were as geographically compact as reasonably possible. Instead, the Enacted Plan subordinated geographic compactness, which enabled the Enacted Plan to create a partisan skew in North Carolina’s congressional districts favoring Republican candidates.

62. ***The Efficiency Gap:*** Another commonly used measure of a districting plan’s partisan bias is the efficiency gap.⁵ To calculate the efficiency gap of the Enacted Plan and every computer-simulated plan, I first measure the number of Republican and Democratic votes within each Enacted Plan district and each computer-simulated district, as measured using the 2016-2020 Statewide Election Composite. Using this measure of district-level partisanship, I then calculate each districting plan’s efficiency gap using the method outlined in *Partisan Gerrymandering and the Efficiency Gap*.⁶ Districts are classified as Democratic victories if, using the 2016-2020 Statewide Election Composite, the sum total of Democratic votes in the district during these elections exceeds the sum total of Republican votes; otherwise, the district is classified as Republican. For each party, I then calculate the total sum of surplus votes in districts

⁵ Eric McGhee, “Measuring Partisan Bias in Single-Member District Electoral Systems.” *Legislative Studies Quarterly* Vol. 39, No. 1: 55–85 (2014).

⁶ Nicholas O. Stephanopoulos & Eric M. McGhee, *Partisan Gerrymandering and the Efficiency Gap*, 82 *University of Chicago Law Review* 831 (2015).

the party won and lost votes in districts where the party lost. Specifically, in a district lost by a given party, all of the party's votes are considered lost votes; in a district won by a party, only the party's votes exceeding the 50% threshold necessary for victory are considered surplus votes. A party's total wasted votes for an entire districting plan is the sum of its surplus votes in districts won by the party and its lost votes in districts lost by the party. The efficiency gap is then calculated as total wasted Republican votes minus total wasted Democratic votes, divided by the total number of two-party votes cast statewide across all seven elections.

63. Thus, the theoretical importance of the efficiency gap is that it tells us the degree to which more Democratic or Republican votes are wasted across an entire districting plan. A significantly positive efficiency gap indicates far more Republican wasted votes, while a significantly negative efficiency gap indicates far more Democratic wasted votes.

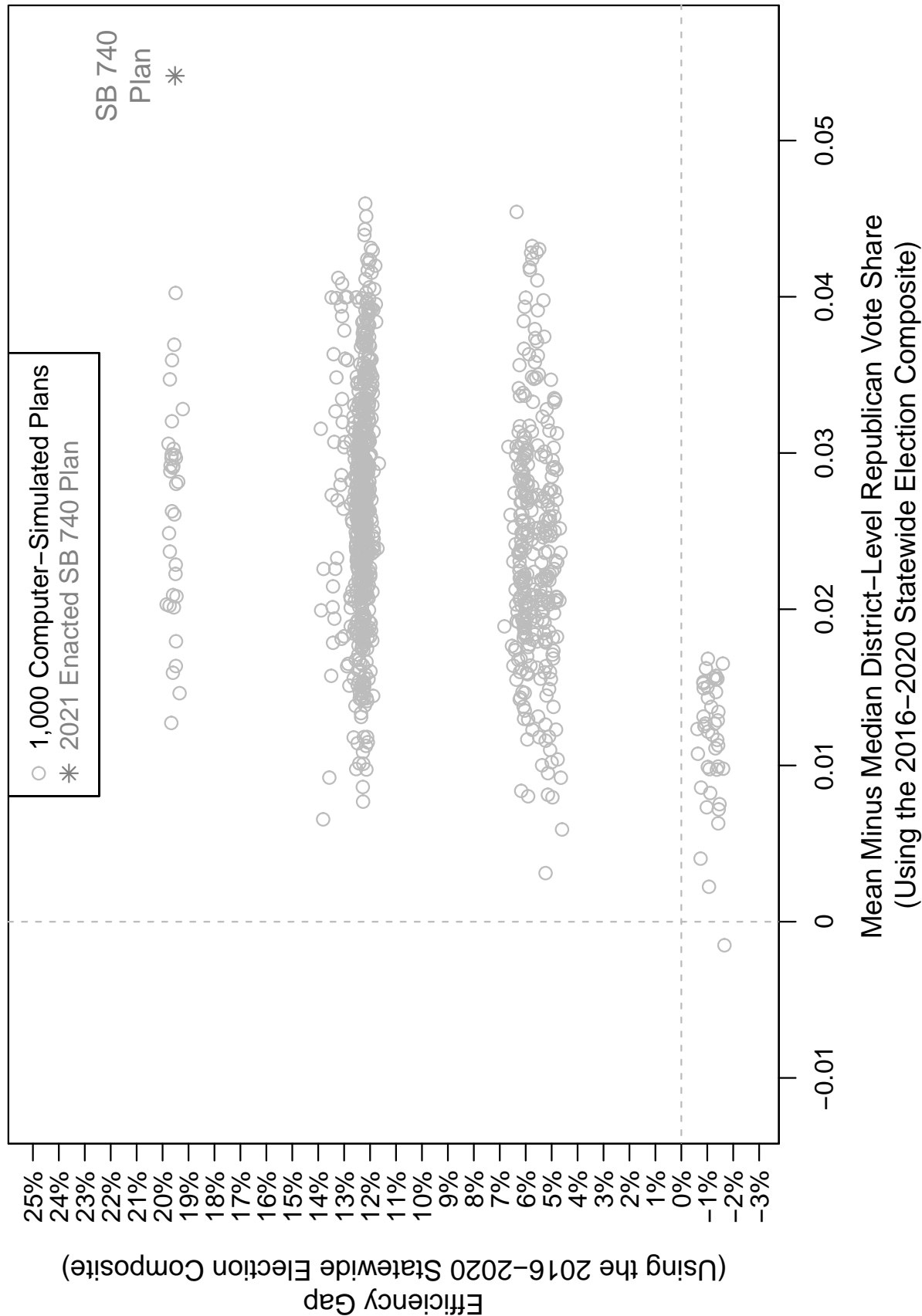
64. I analyze whether the Enacted Plan's efficiency gap arises naturally from a map-drawing process strictly adhering to the mandated criteria in the General Assembly's Adopted Criteria, or rather, whether the skew in the Enacted Plan's efficiency gap is explainable only as the product of a map-drawing process that intentionally favored one party over the other. By comparing the efficiency gap of the Enacted Plan to that of the computer-simulated plans, I am able to evaluate whether or not such the Enacted Plan's efficiency gap could have realistically resulted from adherence to the Adopted Criteria.

65. Figure 9 compares the efficiency gaps of the Enacted Plan and of the 1,000 computer-simulated plans. As before, the 1,000 circles in this Figure represent the 1,000 computer-simulated plans, while the red star in the lower right corner represents the Enacted Plan. Each plan is plotted along the vertical axis according to its efficiency gap, while each plan is plotted along the horizontal axis according to its mean-median difference.

66. The results in Figure 9 illustrate that the Enacted Plan exhibits an efficiency gap of +19.5%, indicating that the plan results in far more wasted Democratic votes than wasted Republican votes. Specifically, the difference between the total number of wasted Democratic votes and wasted Republican votes amounts to 19.5% of the total number of votes statewide. The Enacted Plan's efficiency gap is larger than the efficiency gaps exhibited by 97.7% of the computer-simulated plans. This comparison reveals that the significant level of Republican bias exhibited by the Enacted Plan cannot be explained by North Carolina's political geography or the Adopted Criteria alone.

Figure 9:

Comparisons of Enacted SB 740 Plan to 1,000 Computer-Simulated Plans on Mean-Median Difference and Efficiency Gap



67. ***The Lopsided Margins Measure:*** Another measure of partisan bias in districting plans is the "lopsided margins" test. The basic premise captured by this measure is that a partisan-motivated map-drawer may attempt to pack the opposing party's voters into a small number of extreme districts that are won by a lopsided margin. Thus, for example, a map-drawer attempting to favor Party A may pack Party B's voters into a small number of districts that very heavily favor Party B. This packing would then allow Party A to win all the remaining districts with relatively smaller margins. This sort of partisan manipulation in districting would result in Party B winning its districts by extremely large margins, while Party A would win its districts by relatively small margins.

68. Hence, the lopsided margins test is performed by calculating the difference between the average margin of victory in Republican-favoring districts and the average margin of victory in Democratic-favoring districts. The 2021 Enacted Plan contains four Democratic-favoring districts (CD-2, 5, 6, and 9), and these four districts have an average Democratic vote share of 65.4%, as measured using the 2016-2020 Statewide Election Composite. By contrast, the Enacted Plan contains ten Republican-favoring districts (CD-1, 3, 4, 7, 8, 10, 11, 12, 13, and 14), and these ten districts have an average Republican vote share of 57.3%. Hence, the difference between the average Democratic margin of victory in Democratic-favoring districts and the average Republican margin of victory in Republican-favoring districts is +8.1%, which is calculated as 65.4% - 57.3%. I refer to this calculation of +8.1% as the Enacted Plan's lopsided margins measure.

69. How does the 8.1% lopsided margins measure of the Enacted Plan compare to the same calculation for the 1,000 computer-simulated plans? Figure 10 reports the lopsided margins calculations for the Enacted Plan and for the simulated plans. In Figure 10, each plan is plotted

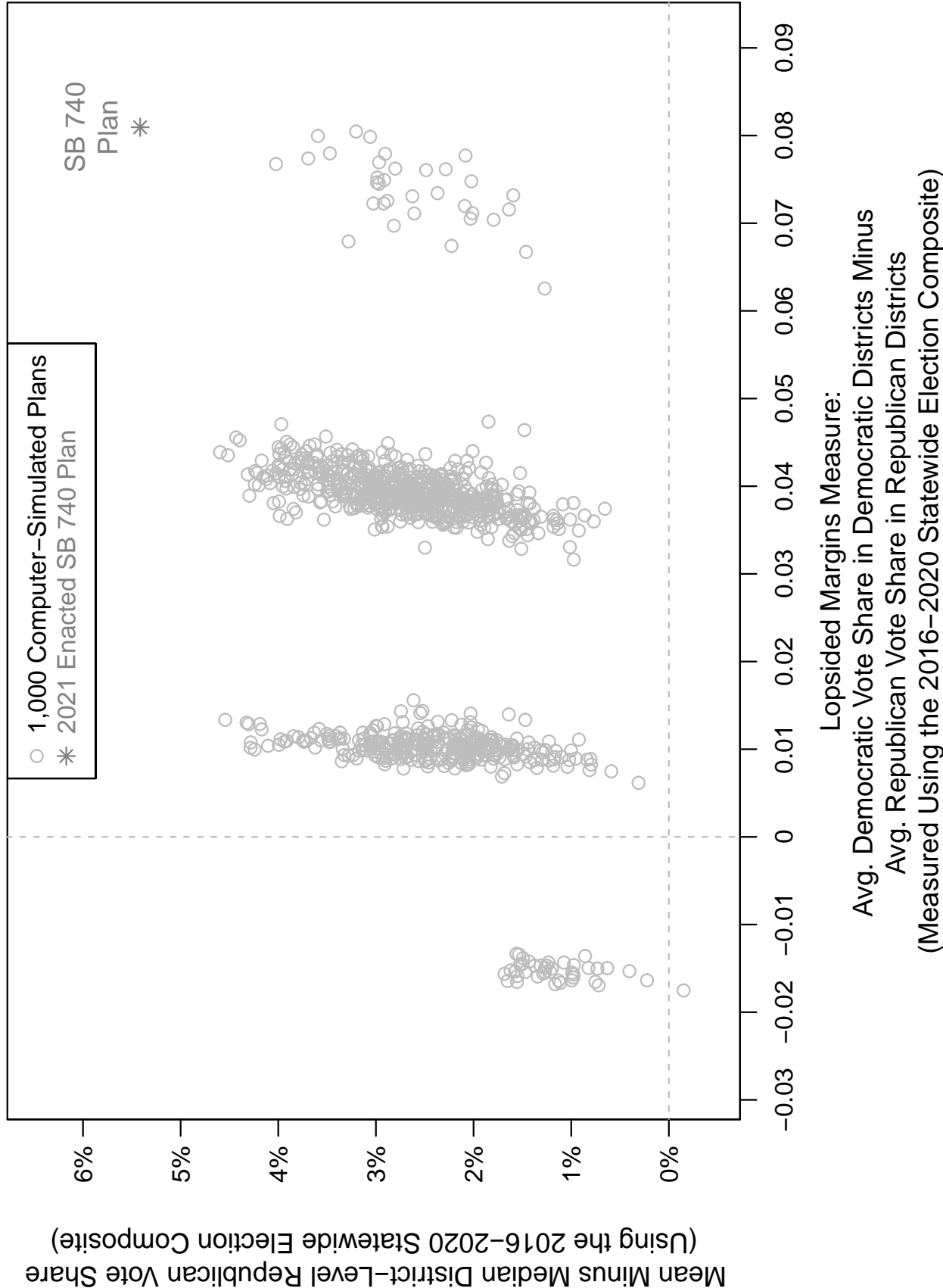
along the horizontal axis according to its lopsided margins measure and along the vertical axis according to its mean-median difference.

70. Figure 10 reveals that the Enacted Plan's +8.1% lopsided margins measure is an extreme outlier compared to the lopsided margins measures of the 1,000 computer-simulated plans. All 1,000 of the simulated plans have a smaller lopsided margins measure than the Enacted Plan. In fact, a significant minority (34.5%) of the 1,000 simulated plans have a lopsided margins measure of between -2% to +2%, indicating a plan in which Democrats and Republicans win their respective districts by similar average margins.

71. By contrast, the Enacted Plan's lopsided margins measure of +8.1% indicates that the Enacted Plan creates districts in which Democrats are extremely packed into their districts, while the margin of victory in Republican districts is significantly smaller. The "lopsidedness" of the two parties' average margin of victory is extreme when compared to the computer-simulated plans. The finding that all 1,000 simulated plans have a smaller lopsided margins measure indicates that the Enacted Plan's extreme packing of Democrats into Democratic-favoring districts was not simply the result of North Carolina's political geography, combined with adherence to the Adopted Criteria.

Figure 10:

**Comparisons of Enacted SB 740 Plan to 1,000 Computer-Simulated Plans
on Lopsided Margins Measure and Mean-Median Difference**



Conclusions Regarding Partisanship and Traditional Districting Criteria:

72. The analysis described thus far in this report lead me to reach two main findings: First, among the five traditional districting criteria mandated by the General Assembly’s 2021 Adopted Criteria, the Enacted Plan fails to minimize county splits, fails to minimize VTD splits, and is significantly less geographically compact than is reasonably possible under a districting process that follows the Adopted Criteria. Second, I found that the Enacted Plan is an extreme partisan outlier when compared to computer-simulated plans produced by a process following the Adopted Criteria. The Enacted Plan contains 10 districts that are partisan outliers when compared to the simulated plans’ districts, and using several different common measures of partisan bias, the Enacted Plan creates a level of pro-Republican bias more extreme than in over 95% of the computer-simulated plans. In particular, the Enacted Plan creates more “mid-range” Republican districts than is created in 100% of the computer-simulated plans (Paragraphs 45-46).

73. Based on these two main findings, I conclude that partisanship predominated in the drawing of the 2021 Enacted Plan and subordinated the traditional districting principles of avoiding county splits, avoiding VTD splits, and geographic compactness. Because the Enacted Plan fails to follow three of the Adopted Criteria’s mandated districting principles while simultaneously creating an extreme level of partisan bias, I therefore conclude that the partisan bias of the Enacted Plan did not naturally arise by chance from a districting process adhering to the Adopted Criteria. Instead, I conclude that partisan goals predominated in the drawing of the Enacted Plan. By subordinating traditional districting criteria, the General Assembly’s Enacted Plan was able to achieve partisan goals that could not otherwise have been achieved under a partisan-neutral districting process that follows the Adopted Criteria.

The Effect of the Enacted Plan Districts on Plaintiffs

74. I evaluated the congressional districts in which each Plaintiff would reside under the 1,000 computer-simulated using a list of geocoded residential addresses for the Plaintiffs that counsel for the Plaintiffs provided me. I used these geocoded addresses to identify the specific district in which each Plaintiff would be located under each computer-simulated plan, as well as under the Enacted Plan. I then compared the partisanship of each individual Plaintiff's Enacted Plan district to the partisanship of the Plaintiff's 1,000 districts from the 1,000 computer-simulated plans. Using this approach, I identify whether each Plaintiff's district is a partisan outlier when compared to the Plaintiff's 1,000 computer-simulated districts.

75. Figure 11 present the results of this analysis. This Figure lists the individual Plaintiffs and describes the partisanship of each Plaintiff's district of residence in the Enacted Plan, as well as the partisanship of the district the Plaintiff would have resided in under each of the 1,000 simulated congressional plans.

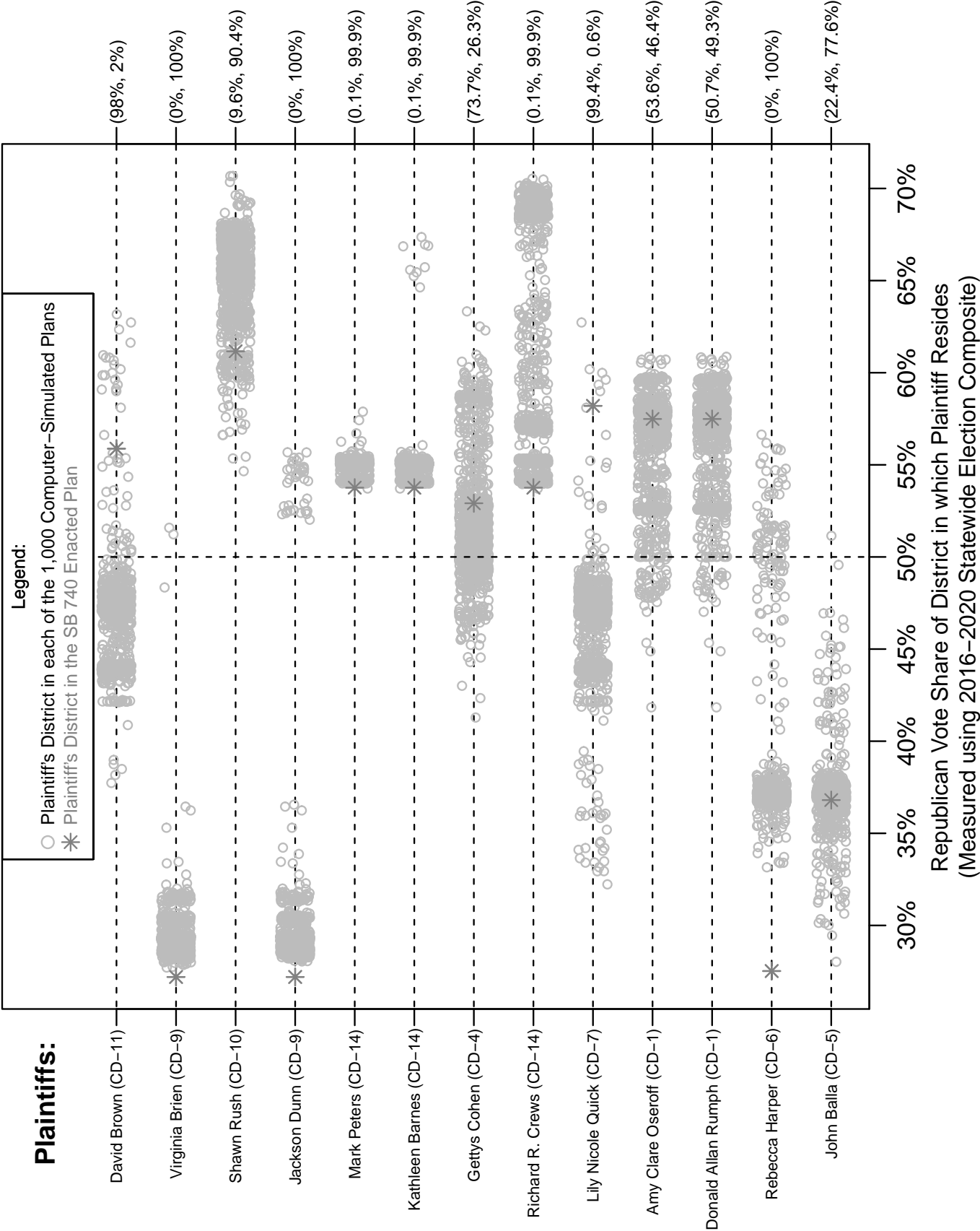
76. To explain these analyses with an example each row in Figure 11 corresponds to a particular individual Plaintiff. In the first row, describing Plaintiff David Brown, the red star depicts the partisanship of the Plaintiff's Enacted Plan district (CD-11), as measured by Republican vote share using the 2016-2020 Statewide Election Composite. The 1,000 gray circles on this row depict the Republican vote share of each of the 1,000 simulated districts in which the Plaintiff would reside in each of the 1,000 computer-simulated plans, based on that Plaintiff's residential address. In the margin to the right of each row, I list in parentheses how many of the 1,000 simulated plans would place the plaintiff in a more Democratic-leaning district (on the left) and how many of the 1,000 simulations would place the plaintiff in a more Republican-leaning district (on the right) than the Plaintiff's Enacted Plan district. Thus, for

example, the first row of Figure 11 reports that 98% of the 1,000 computer-simulated plans would place Plaintiff David Brown in a more Democratic-leaning district than his actual Enacted Plan district (CD-11). Therefore, I can conclude that Plaintiff David Brown’s Enacted Plan district is a partisan statistical outlier when compared to his district under the 1,000 simulated plans.

77. Figure 11 shows that two Plaintiffs residing in Republican-leaning districts under the Enacted Plan would be placed in a more Democratic-leaning district in over 95% of the computer-simulated plans: David Brown (CD-11) and Lily Nicole Quick (CD-7).

Figure 11:

Plaintiffs' Districts in the SB 740 Plan and in 1,000 Computer-Simulated Plans



78. Additionally, Figure 11 shows that six Plaintiffs would be placed in a more Republican district in 99.9% or more of the simulated plans relative to their districts under the Enacted Plan: Virginia Brien (CD-9), Jackson Dunn (CD-9), Mark Peters (CD-14), Kathleen Barnes (CD-14), Richard R. Crews (CD-14), and Rebecca Harper (CD-6).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

This 30th day of November, 2021.

A handwritten signature in black ink, appearing to read "J. Chen", written over a horizontal line.

Dr. Jowei Chen

Jowei Chen
Curriculum Vitae

Department of Political Science
University of Michigan
5700 Haven Hall
505 South State Street
Ann Arbor, MI 48109-1045
Phone: 917-861-7712, Email: jowei@umich.edu
Website: <http://www.umich.edu/~jowei>

Academic Positions:

Associate Professor (2015-present), Assistant Professor (2009-2015), Department of Political Science, University of Michigan.

Research Associate Professor (2016-present), Faculty Associate (2009-2015), Center for Political Studies, University of Michigan.

W. Glenn Campbell and Rita Ricardo-Campbell National Fellow, Hoover Institution, Stanford University, 2013.

Principal Investigator and Senior Research Fellow, Center for Governance and Public Policy Research, Willamette University, 2013 – Present.

Education:

Ph.D., Political Science, Stanford University (June 2009)

M.S., Statistics, Stanford University (January 2007)

B.A., Ethics, Politics, and Economics, Yale University (May 2004)

Publications:

Chen, Jowei and Neil Malhotra. 2007. “The Law of k/n: The Effect of Chamber Size on Government Spending in Bicameral Legislatures.”

American Political Science Review. 101(4): 657-676.

Chen, Jowei, 2010. “The Effect of Electoral Geography on Pork Barreling in Bicameral Legislatures.”

American Journal of Political Science. 54(2): 301-322.

Chen, Jowei, 2013. “Voter Partisanship and the Effect of Distributive Spending on Political Participation.”

American Journal of Political Science. 57(1): 200-217.

Chen, Jowei and Jonathan Rodden, 2013. “Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures”

Quarterly Journal of Political Science, 8(3): 239-269.

Bradley, Katharine and Jowei Chen, 2014. “Participation Without Representation? Senior Opinion, Legislative Behavior, and Federal Health Reform.”

Journal of Health Politics, Policy and Law. 39(2), 263-293.

Chen, Jowei and Tim Johnson, 2015. “Federal Employee Unionization and Presidential Control of the Bureaucracy: Estimating and Explaining Ideological Change in Executive Agencies.”

Journal of Theoretical Politics, Volume 27, No. 1: 151-174.

Bonica, Adam, Jowei Chen, and Tim Johnson, 2015. “Senate Gate-Keeping, Presidential Staffing of ‘Inferior Offices’ and the Ideological Composition of Appointments to the Public Bureaucracy.”

Quarterly Journal of Political Science. Volume 10, No. 1: 5-40.

Chen, Jowei and Jonathan Rodden, 2015. “Cutting Through the Thicket: Redistricting Simulations and the Detection of Partisan Gerrymanders.”

Election Law Journal. Volume 14, Number 4: 331-345.

Chen, Jowei and David Cottrell, 2016. “Evaluating Partisan Gains from Congressional Gerrymandering: Using Computer Simulations to Estimate the Effect of Gerrymandering in the U.S. House.”

Electoral Studies. Volume 44 (December 2016): 329-340.

Chen, Jowei, 2017. “Analysis of Computer-Simulated Districting Maps for the Wisconsin State Assembly.”

Election Law Journal. Volume 16, Number 4 (December 2017): 417-442.

Chen, Jowei and Nicholas Stephanopoulos, 2020. “The Race-Blind Future of Voting Rights.”

Yale Law Journal, Forthcoming. Volume 130, Number 4: 778-1049.

Kim, Yunsieg and Jowei Chen, 2021. "Gerrymandered by Definition: The Distortion of 'Traditional' Districting Principles and a Proposal for an Empirical Redefinition."

Wisconsin Law Review, Forthcoming, Volume 2021, Number 1.

Chen, Jowei and Nicholas Stephanopoulos, 2021. "Democracy's Denominator."

California Law Review, Accepted for Publication, Volume 109.

Non-Peer-Reviewed Publication:

Chen, Jowei and Tim Johnson. 2017. “Political Ideology in the Bureaucracy.”

Global Encyclopedia of Public Administration, Public Policy, and Governance.

Research Grants:

"How Citizenship-Based Redistricting Systemically Disadvantages Voters of Color". 2020 (\$18,225). Combating and Confronting Racism Grant. University of Michigan Center for Social Solutions and Poverty Solutions.

Principal Investigator. [National Science Foundation Grant SES-1459459](#), September 2015 – August 2018 (\$165,008). "The Political Control of U.S. Federal Agencies and Bureaucratic Political Behavior."

"Economic Disparity and Federal Investments in Detroit," (with Brian Min) 2011. Graham Institute, University of Michigan (\$30,000).

"The Partisan Effect of OSHA Enforcement on Workplace Injuries," (with Connor Raso) 2009. John M. Olin Law and Economics Research Grant (\$4,410).

Invited Talks:

September, 2011. University of Virginia, American Politics Workshop.

October 2011. Massachusetts Institute of Technology, American Politics Conference.

January 2012. University of Chicago, Political Economy/American Politics Seminar.

February 2012. Harvard University, Positive Political Economy Seminar.

September 2012. Emory University, Political Institutions and Methodology Colloquium.

November 2012. University of Wisconsin, Madison, American Politics Workshop.

September 2013. Stanford University, Graduate School of Business, Political Economy Workshop.

February 2014. Princeton University, Center for the Study of Democratic Politics Workshop.

November 2014. Yale University, American Politics and Public Policy Workshop.

December 2014. American Constitution Society for Law & Policy Conference: Building the Evidence to Win Voting Rights Cases.

February 2015. University of Rochester, American Politics Working Group.

March 2015. Harvard University, Voting Rights Act Workshop.

May 2015. Harvard University, Conference on Political Geography.

October 2015. George Washington University School of Law, Conference on Redistricting Reform.

September 2016. Harvard University Center for Governmental and International Studies, Voting Rights Institute Conference.

March 2017. Duke University, Sanford School of Public Policy, Redistricting Reform Conference.

October 2017. Willamette University, Center for Governance and Public Policy Research

October 2017, University of Wisconsin, Madison. Geometry of Redistricting Conference.

February 2018: University of Georgia Law School

September 2018. Willamette University.

November 2018. Yale University, Redistricting Workshop.

November 2018. University of Washington, Severyns Ravenholt Seminar in Comparative Politics.

January 2019. Duke University, Reason, Reform & Redistricting Conference.

February 2019. Ohio State University, Department of Political Science. Departmental speaker series.

March 2019. Wayne State University Law School, Gerrymandering Symposium.

November 2019. Big Data Ignite Conference.

November 2019. Calvin College, Department of Mathematics and Statistics.

September 2020 (Virtual). Yale University, Yale Law Journal Scholarship Workshop

Conference Service:

Section Chair, 2017 APSA (San Francisco, CA), Political Methodology Section

Discussant, 2014 Political Methodology Conference (University of Georgia)

Section Chair, 2012 MPSA (Chicago, IL), Political Geography Section.

Discussant, 2011 MPSA (Chicago, IL) “Presidential-Congressional Interaction.”

Discussant, 2008 APSA (Boston, MA) “Congressional Appropriations.”

Chair and Discussant, 2008 MPSA (Chicago, IL) “Distributive Politics: Parties and Pork.”

Conference Presentations and Working Papers:

“Ideological Representation of Geographic Constituencies in the U.S. Bureaucracy,” (with Tim Johnson). 2017 APSA.

“Incentives for Political versus Technical Expertise in the Public Bureaucracy,” (with Tim Johnson). 2016 APSA.

“Black Electoral Geography and Congressional Districting: The Effect of Racial Redistricting on Partisan Gerrymandering”. 2016 Annual Meeting of the Society for Political Methodology (Rice University)

“Racial Gerrymandering and Electoral Geography.” Working Paper, 2016.

“Does Deserved Spending Win More Votes? Evidence from Individual-Level Disaster Assistance,” (with Andrew Healy). 2014 APSA.

“The Geographic Link Between Votes and Seats: How the Geographic Distribution of Partisans Determines the Electoral Responsiveness and Bias of Legislative Elections,” (with David Cottrell). 2014 APSA.

“Gerrymandering for Money: Drawing districts with respect to donors rather than voters.” 2014 MPSA.

“Constituent Age and Legislator Responsiveness: The Effect of Constituent Opinion on the Vote for Federal Health Reform.” (with Katharine Bradley) 2012 MPSA.

“Voter Partisanship and the Mobilizing Effect of Presidential Advertising.” (with Kyle Dropp) 2012 MPSA.

“Recency Bias in Retrospective Voting: The Effect of Distributive Benefits on Voting Behavior.” (with Andrew Feher) 2012 MPSA.

“Estimating the Political Ideologies of Appointed Public Bureaucrats,” (with Adam Bonica and Tim Johnson) 2012 Annual Meeting of the Society for Political Methodology (University of North Carolina)

“Tobler’s Law, Urbanization, and Electoral Bias in Florida.” (with Jonathan Rodden) 2010 Annual Meeting of the Society for Political Methodology (University of Iowa)

“Unionization and Presidential Control of the Bureaucracy” (with Tim Johnson) 2011 MPSA.

“Estimating Bureaucratic Ideal Points with Federal Campaign Contributions” 2010 APSA. (Washington, DC).

“The Effect of Electoral Geography on Pork Spending in Bicameral Legislatures,” Vanderbilt University Conference on Bicameralism, 2009.

“When Do Government Benefits Influence Voters’ Behavior? The Effect of FEMA Disaster Awards on US Presidential Votes,” 2009 APSA (Toronto, Canada).

“Are Poor Voters Easier to Buy Off?” 2009 APSA (Toronto, Canada).

“Credit Sharing Among Legislators: Electoral Geography’s Effect on Pork Barreling in Legislatures,” 2008 APSA (Boston, MA).

“Buying Votes with Public Funds in the US Presidential Election,” Poster Presentation at the 2008 Annual Meeting of the Society for Political Methodology (University of Michigan).

“The Effect of Electoral Geography on Pork Spending in Bicameral Legislatures,” 2008 MPSA.

“Legislative Free-Riding and Spending on Pure Public Goods,” 2007 MPSA (Chicago, IL).

“Free Riding in Multi-Member Legislatures,” (with Neil Malhotra) 2007 MPSA (Chicago, IL).

“The Effect of Legislature Size, Bicameralism, and Geography on Government Spending: Evidence from the American States,” (with Neil Malhotra) 2006 APSA (Philadelphia, PA).

**Figure A1: Comparison of Enacted SB 740 Plan to 1,000 Computer–Simulated Plans:
Districts' Republican Vote Share Measured Using the 2016 Attorney General Election Results**

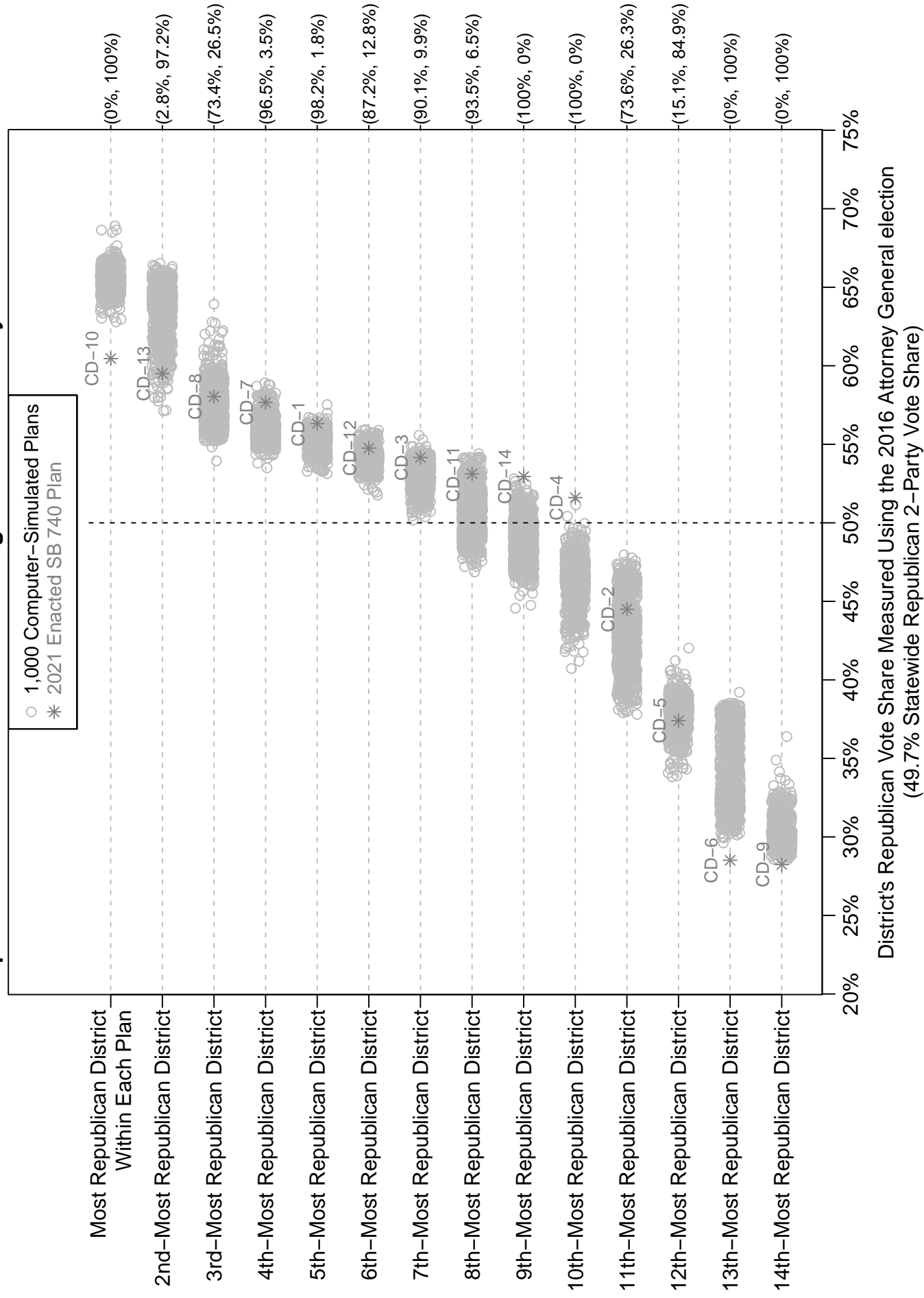
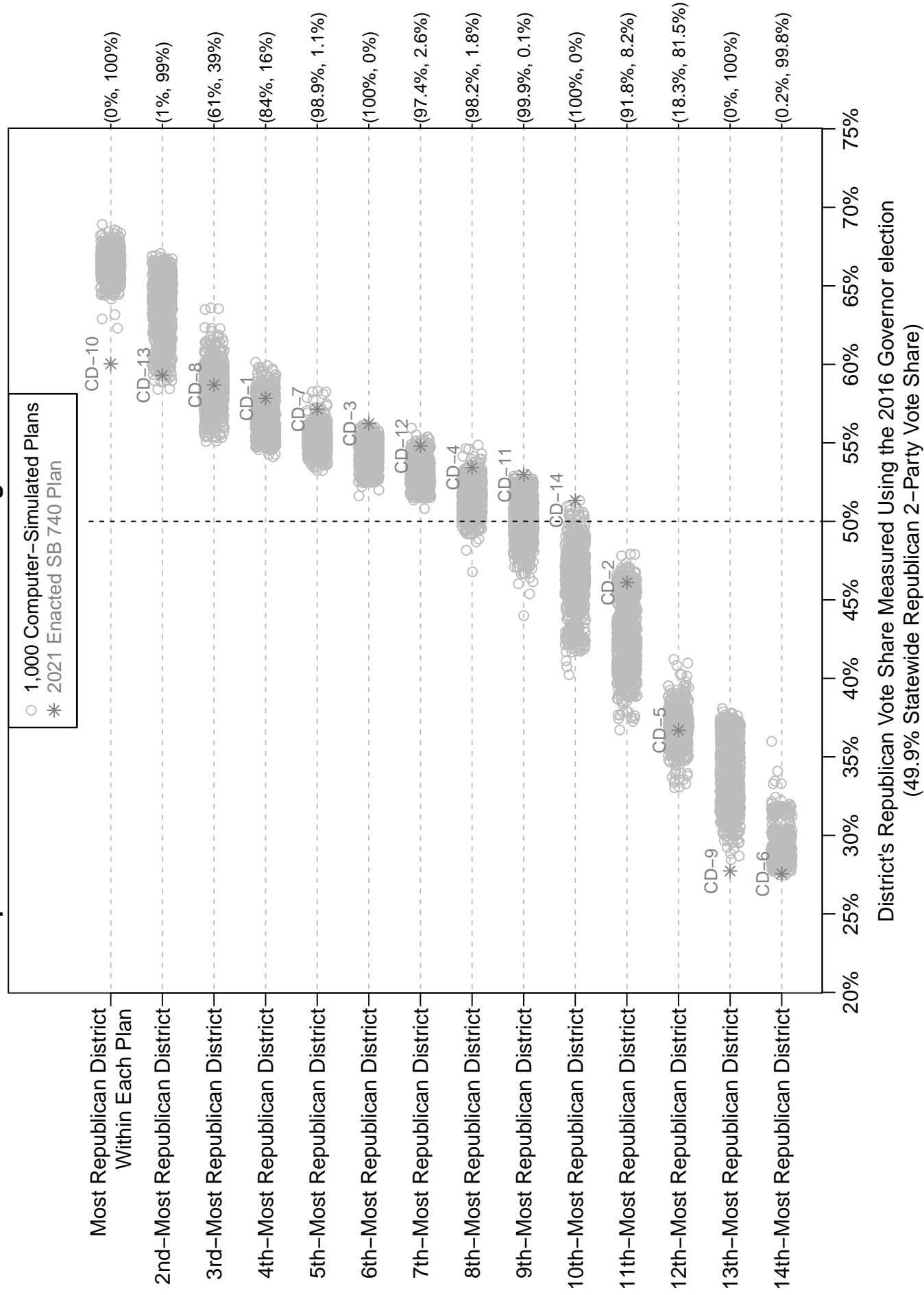
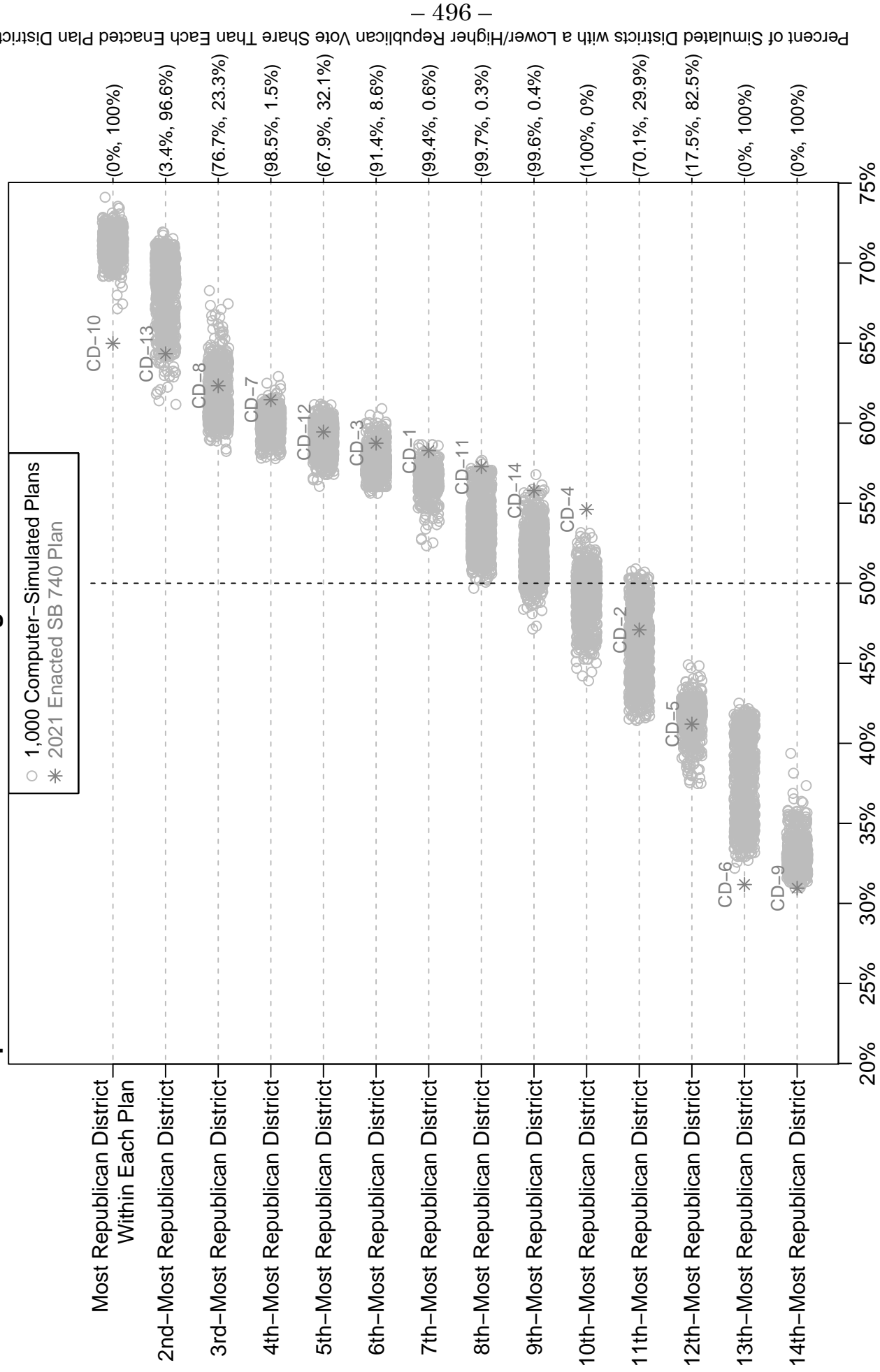


Figure A2: Comparison of Enacted SB 740 Plan to 1,000 Computer-Simulated Plans: Districts' Republican Vote Share Measured Using the 2016 Governor Election Results



**Figure A3: Comparison of Enacted SB 740 Plan to 1,000 Computer–Simulated Plans:
Districts' Republican Vote Share Measured Using the 2016 Lieutenant Governor Election Results**



District's Republican Vote Share Measured Using the 2016 Lieutenant Governor election
(53.3% Statewide Republican 2–Party Vote Share)

**Figure A4: Comparison of Enacted SB 740 Plan to 1,000 Computer–Simulated Plans:
Districts' Republican Vote Share Measured Using the 2016 US President Election Results**

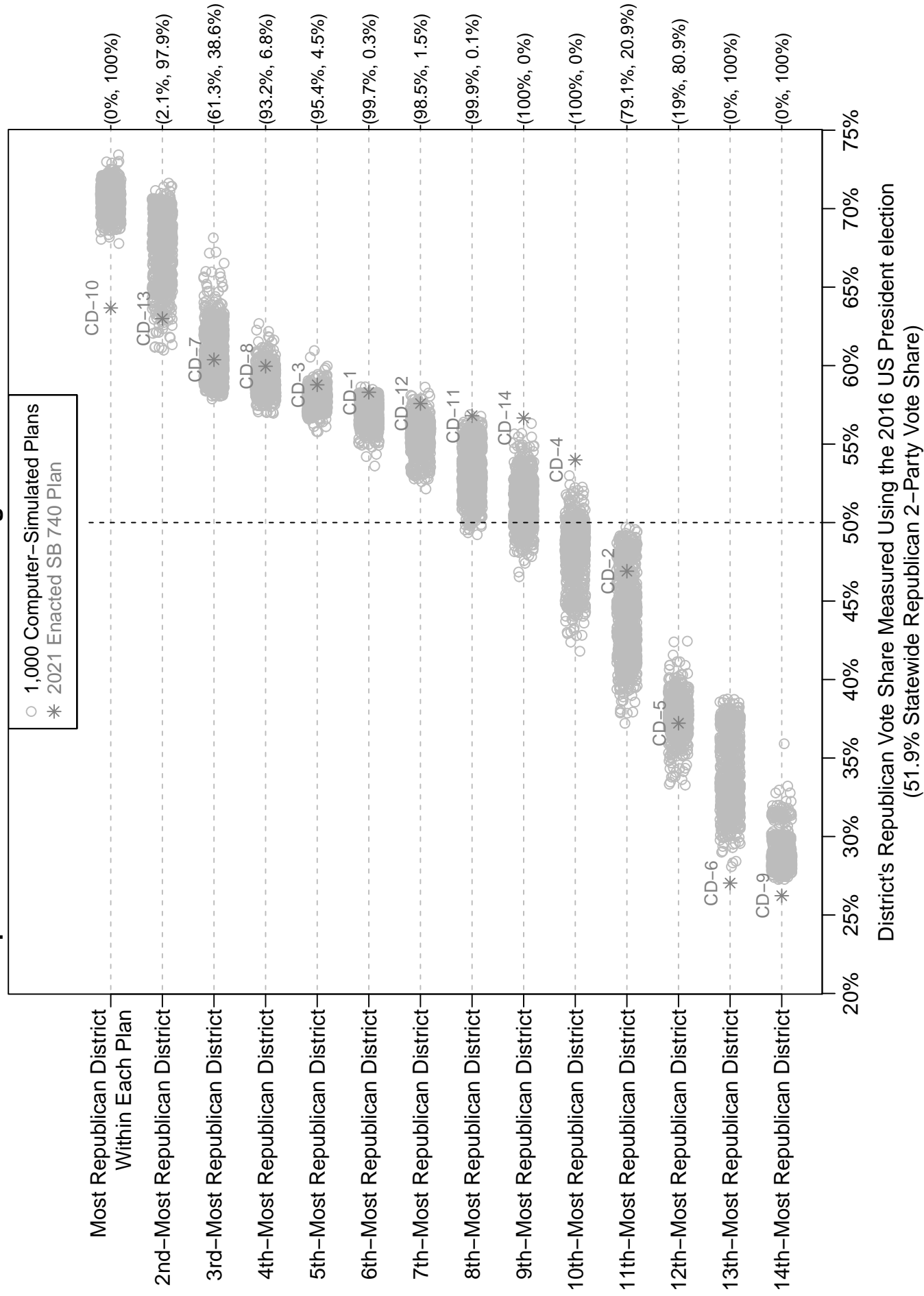
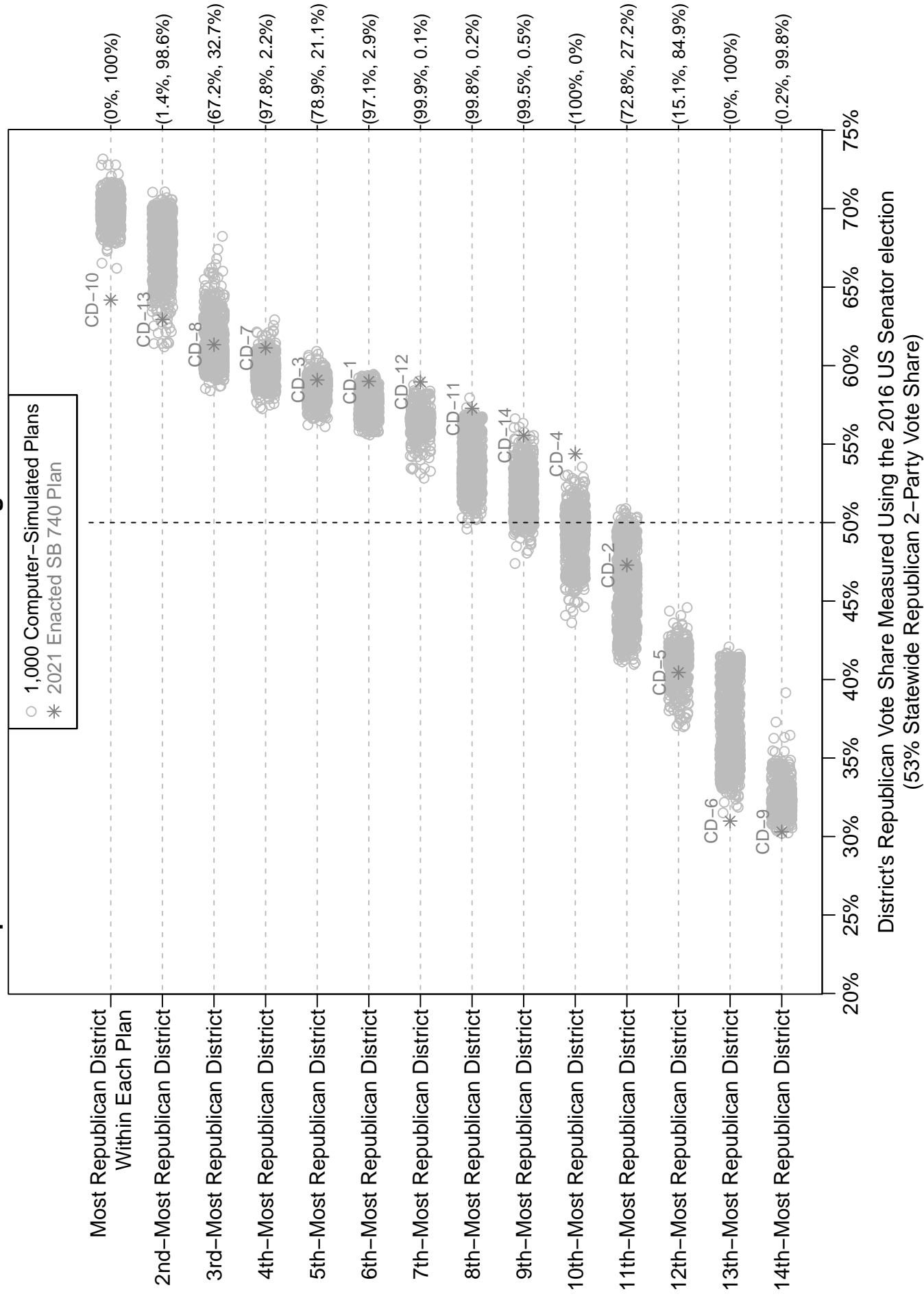
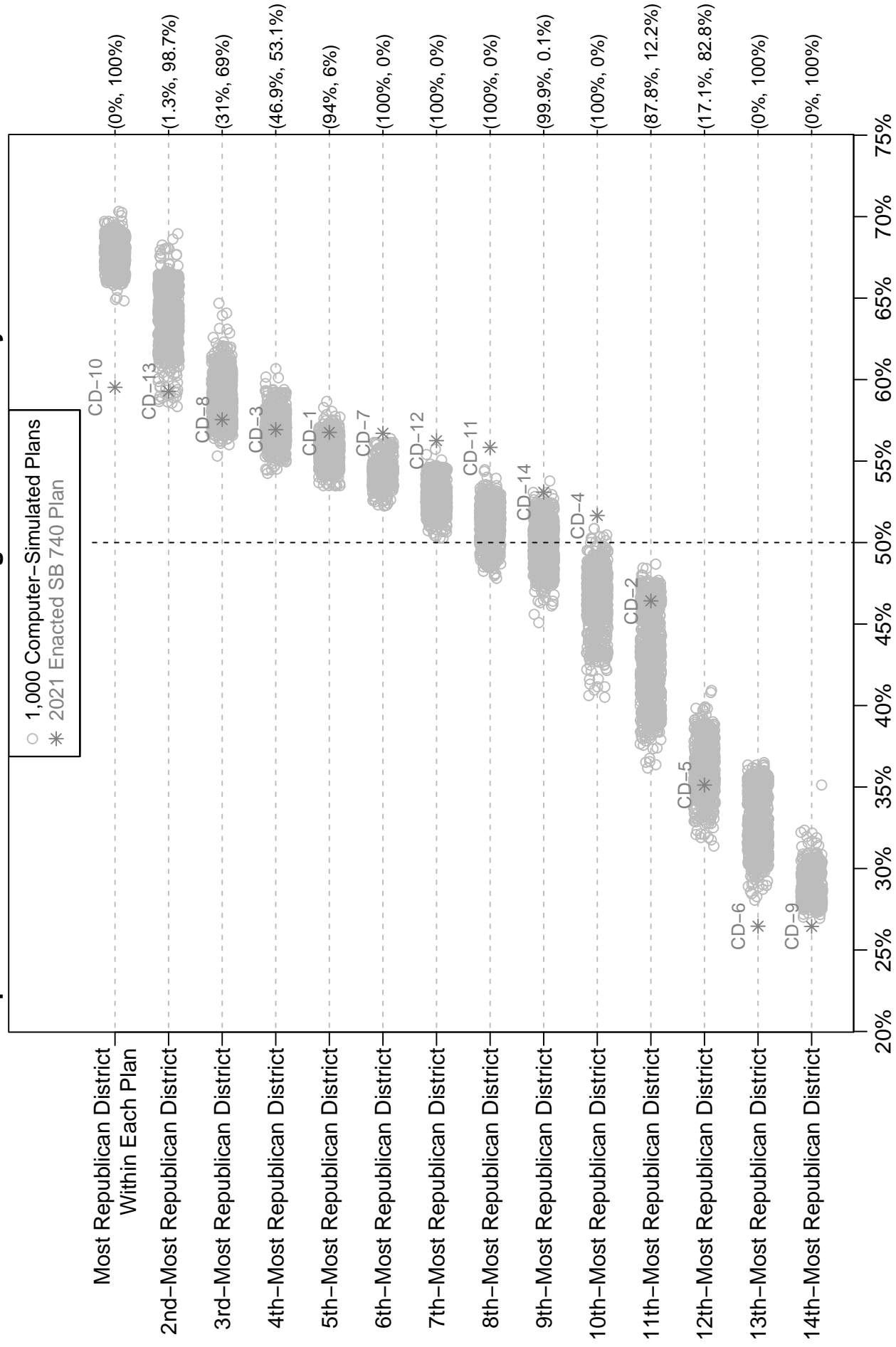


Figure A5: Comparison of Enacted SB 740 Plan to 1,000 Computer–Simulated Plans: Districts' Republican Vote Share Measured Using the 2016 US Senator Election Results

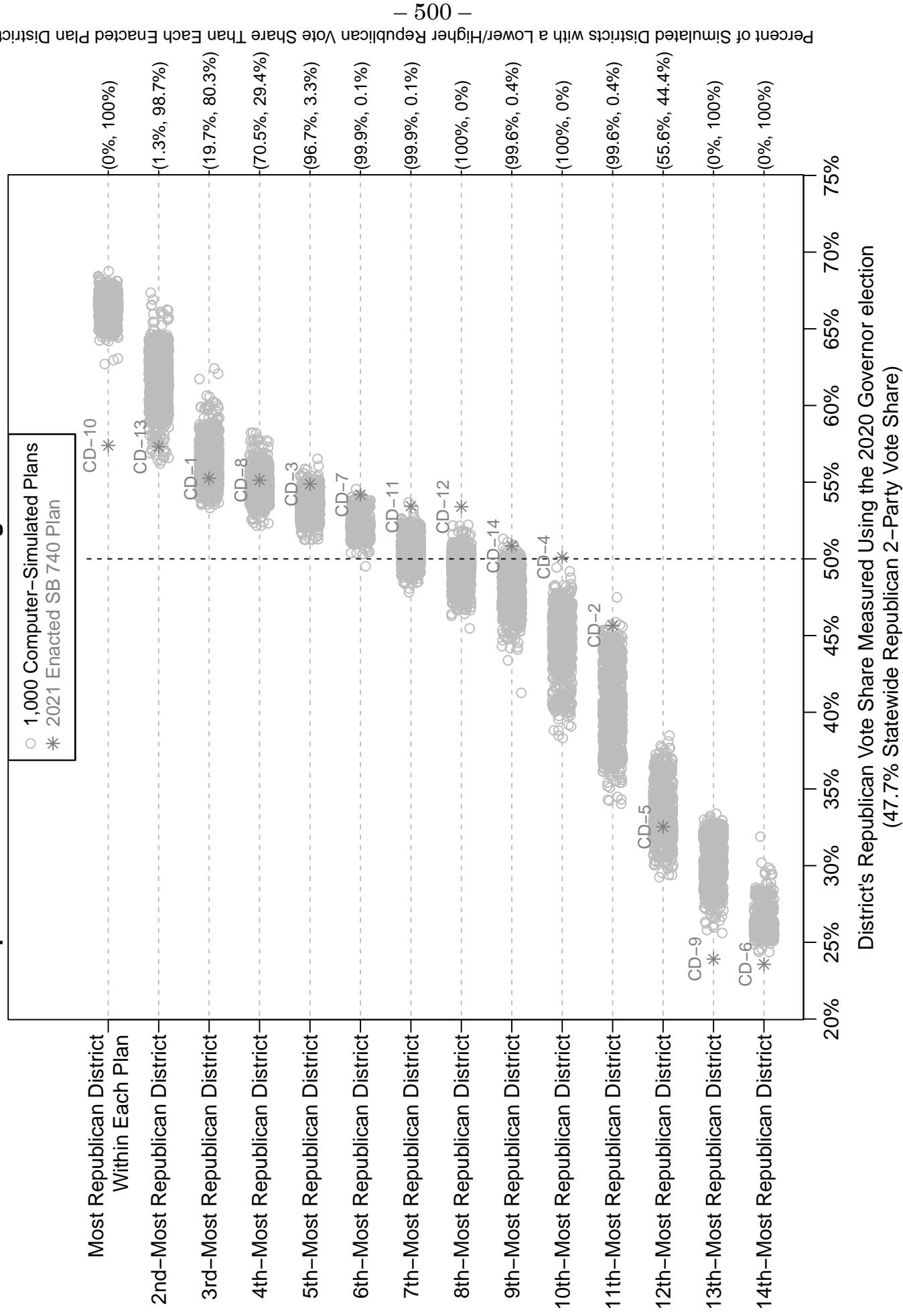


**Figure A6: Comparison of Enacted SB 740 Plan to 1,000 Computer–Simulated Plans:
Districts' Republican Vote Share Measured Using the 2020 Attorney General Election Results**

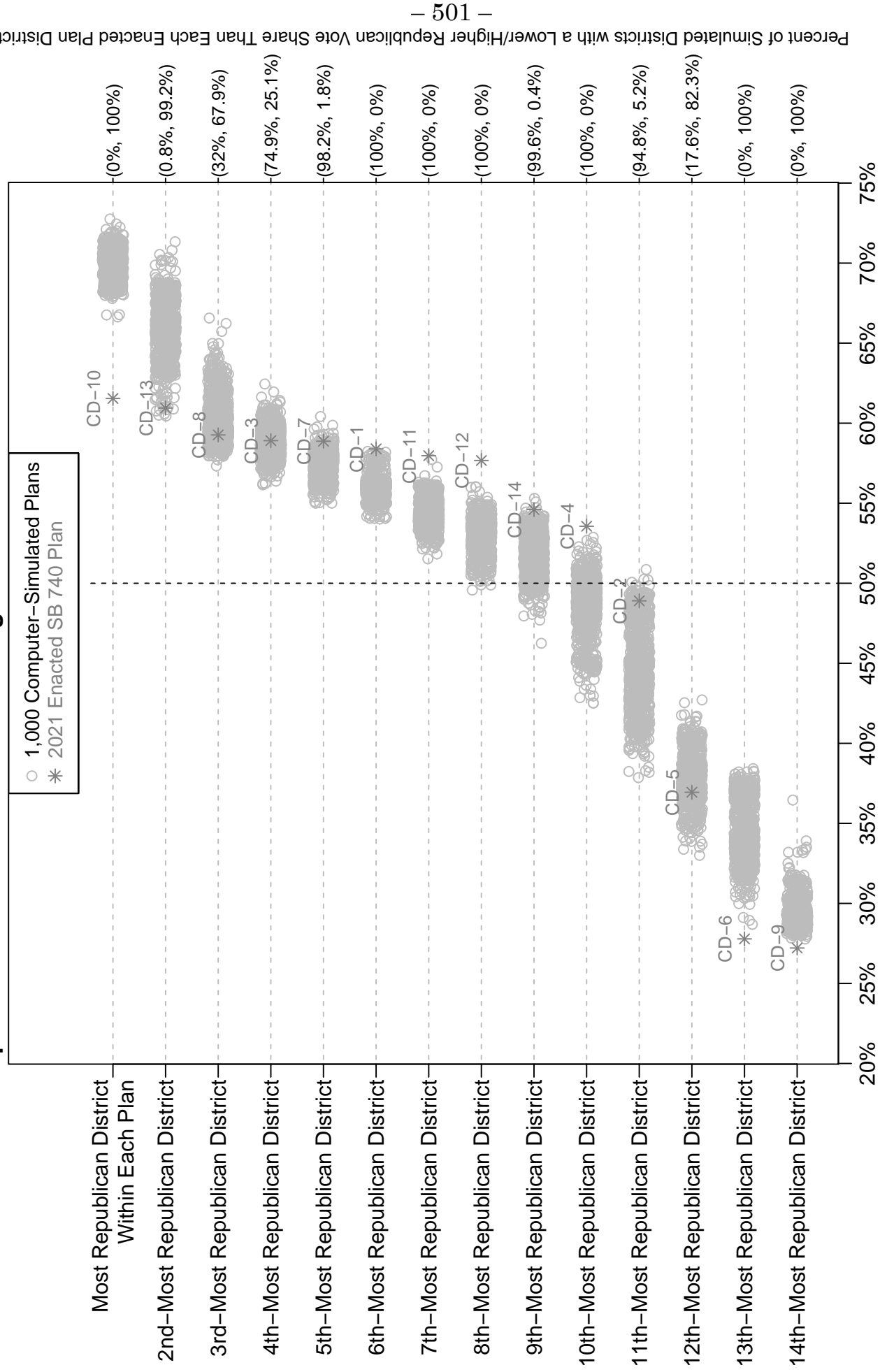


District's Republican Vote Share Measured Using the 2020 Attorney General election
(49.9% Statewide Republican 2–Party Vote Share)

**Figure A7: Comparison of Enacted SB 740 Plan to 1,000 Computer–Simulated Plans:
Districts' Republican Vote Share Measured Using the 2020 Governor Election Results**

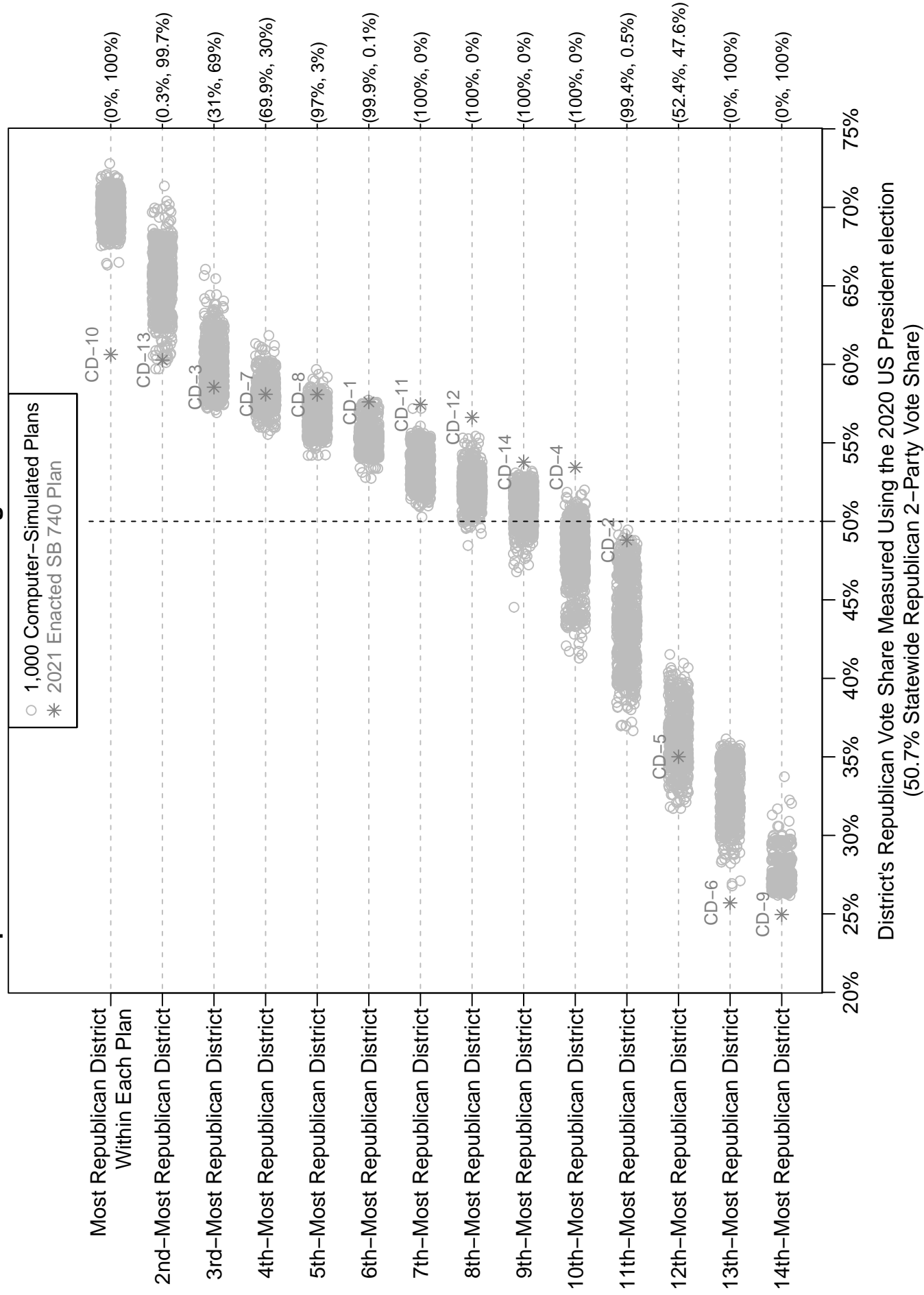


**Figure A8: Comparison of Enacted SB 740 Plan to 1,000 Computer-Simulated Plans:
Districts' Republican Vote Share Measured Using the 2020 Lieutenant Governor Election Results**

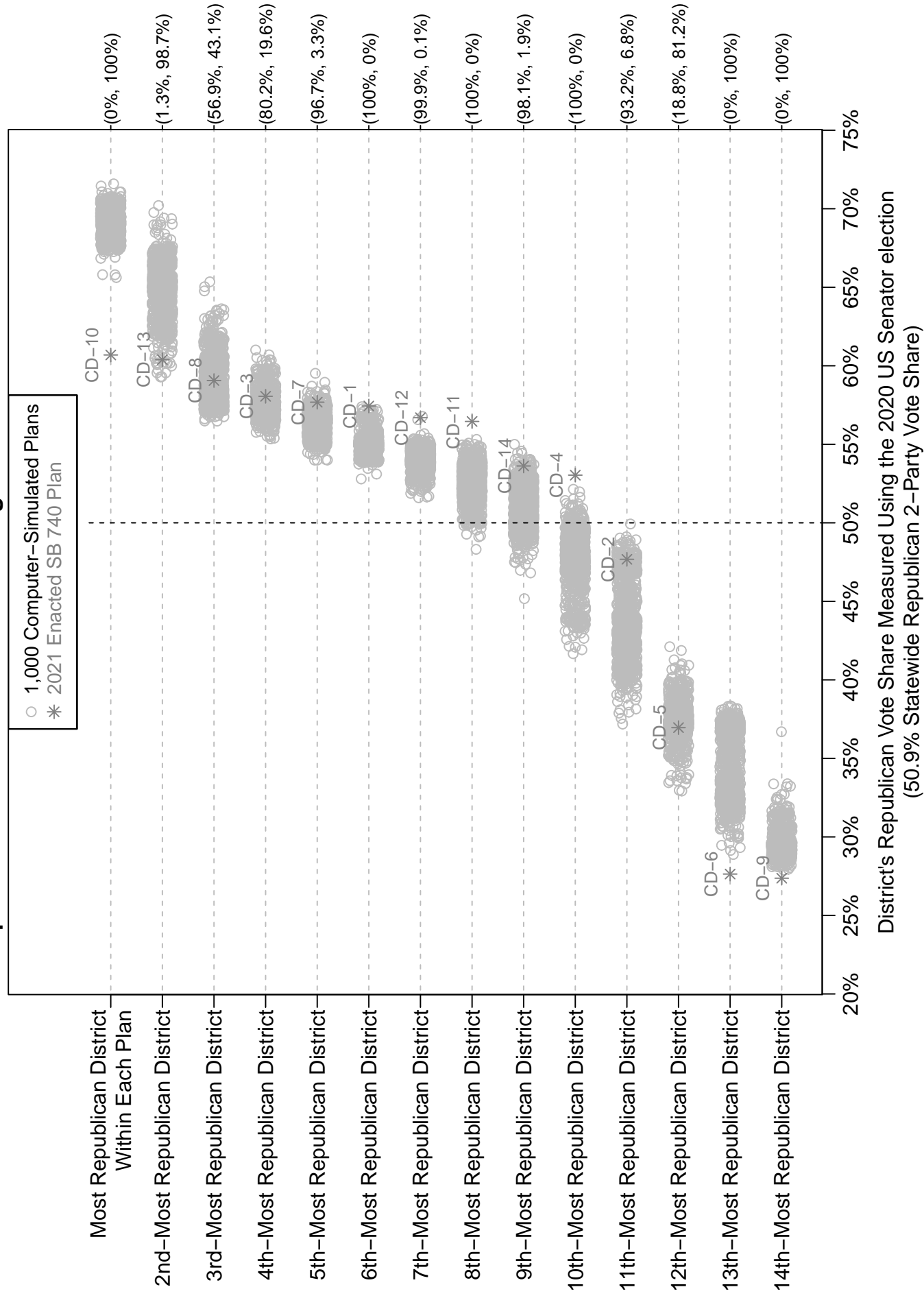


District's Republican Vote Share Measured Using the 2020 Lieutenant Governor election
(51.6% Statewide Republican 2-Party Vote Share)

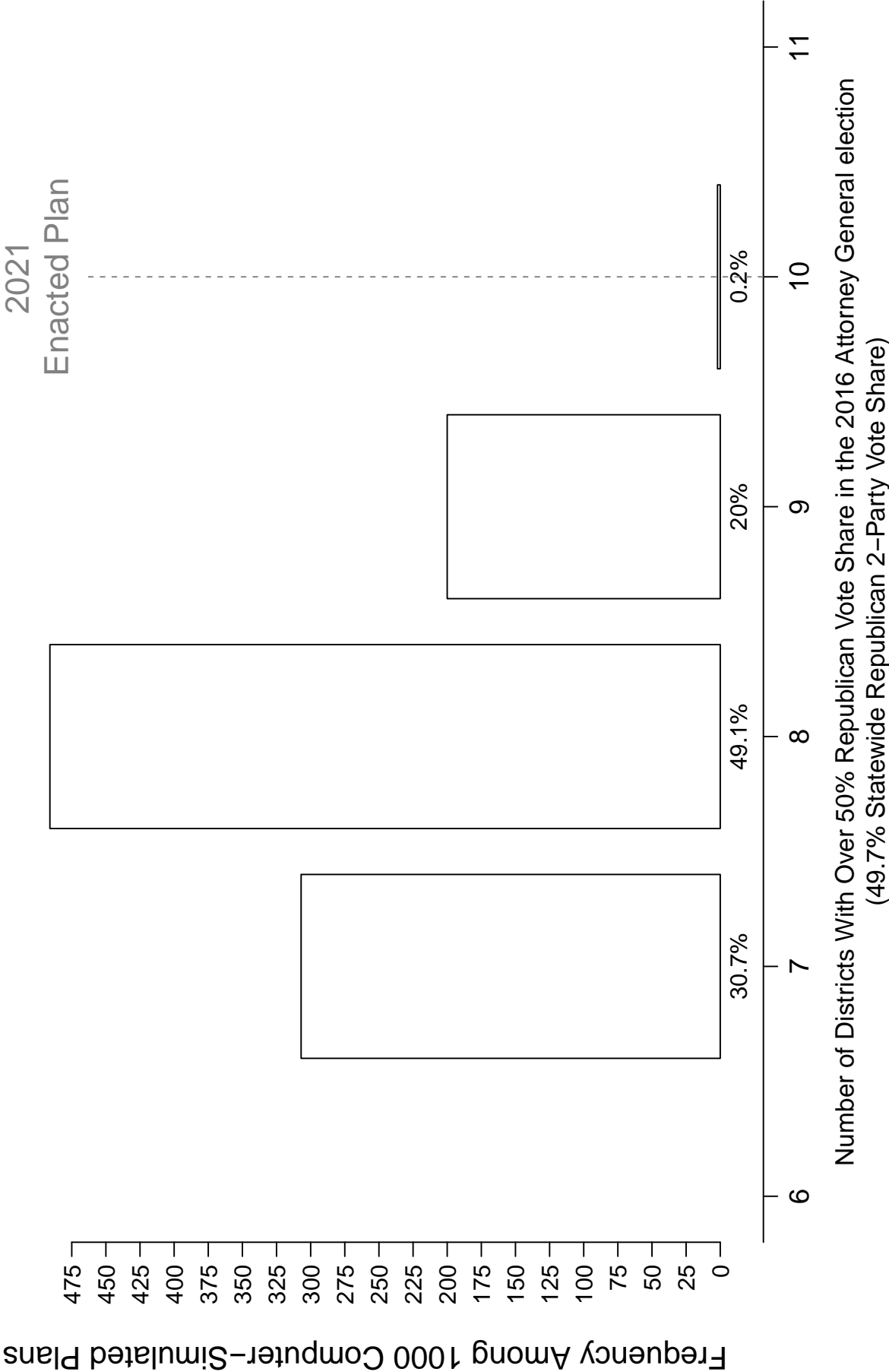
**Figure A9: Comparison of Enacted SB 740 Plan to 1,000 Computer-Simulated Plans:
Districts' Republican Vote Share Measured Using the 2020 US President Election Results**



**Figure A10: Comparison of Enacted SB 740 Plan to 1,000 Computer-Simulated Plans:
Districts' Republican Vote Share Measured Using the 2020 US Senator Election Results**



**Figure B1: Comparisons of Enacted SB 740 Plan to 1,000 Computer-Simulated Plans
Number of Districts With Over 50% Republican Vote Share in the 2016 Attorney General election
(49.7% Statewide Republican 2-Party Vote Share)**



**Figure B2: Comparisons of Enacted SB 740 Plan to 1,000 Computer-Simulated Plans
Number of Districts With Over 50% Republican Vote Share in the 2016 Governor election
(49.9% Statewide Republican 2-Party Vote Share)**

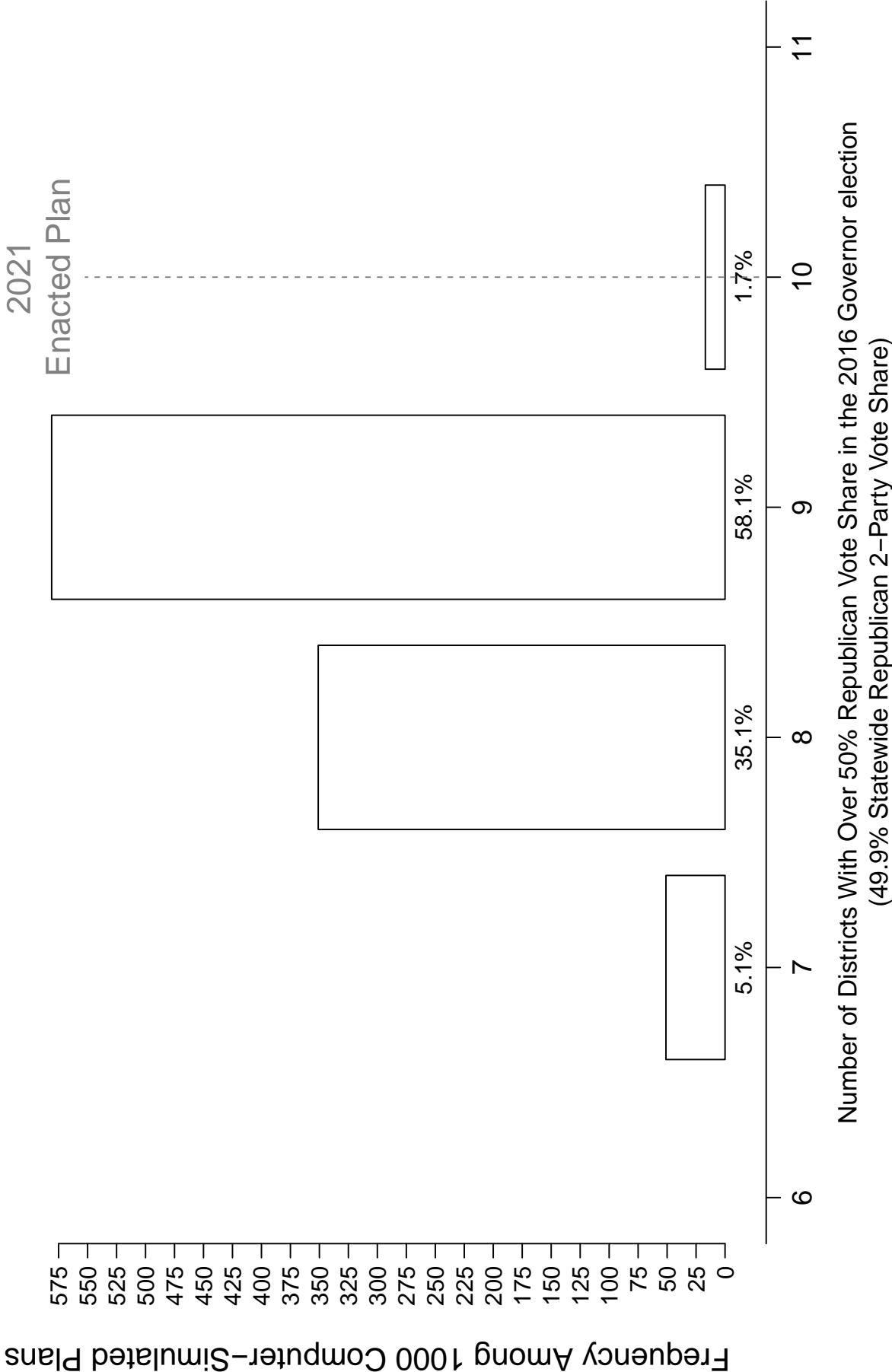


Figure B3: Comparisons of Enacted SB 740 Plan to 1,000 Computer-Simulated Plans
Number of Districts With Over 50% Republican Vote Share in the 2016 Lieutenant Governor election
(53.3% Statewide Republican 2-Party Vote Share)

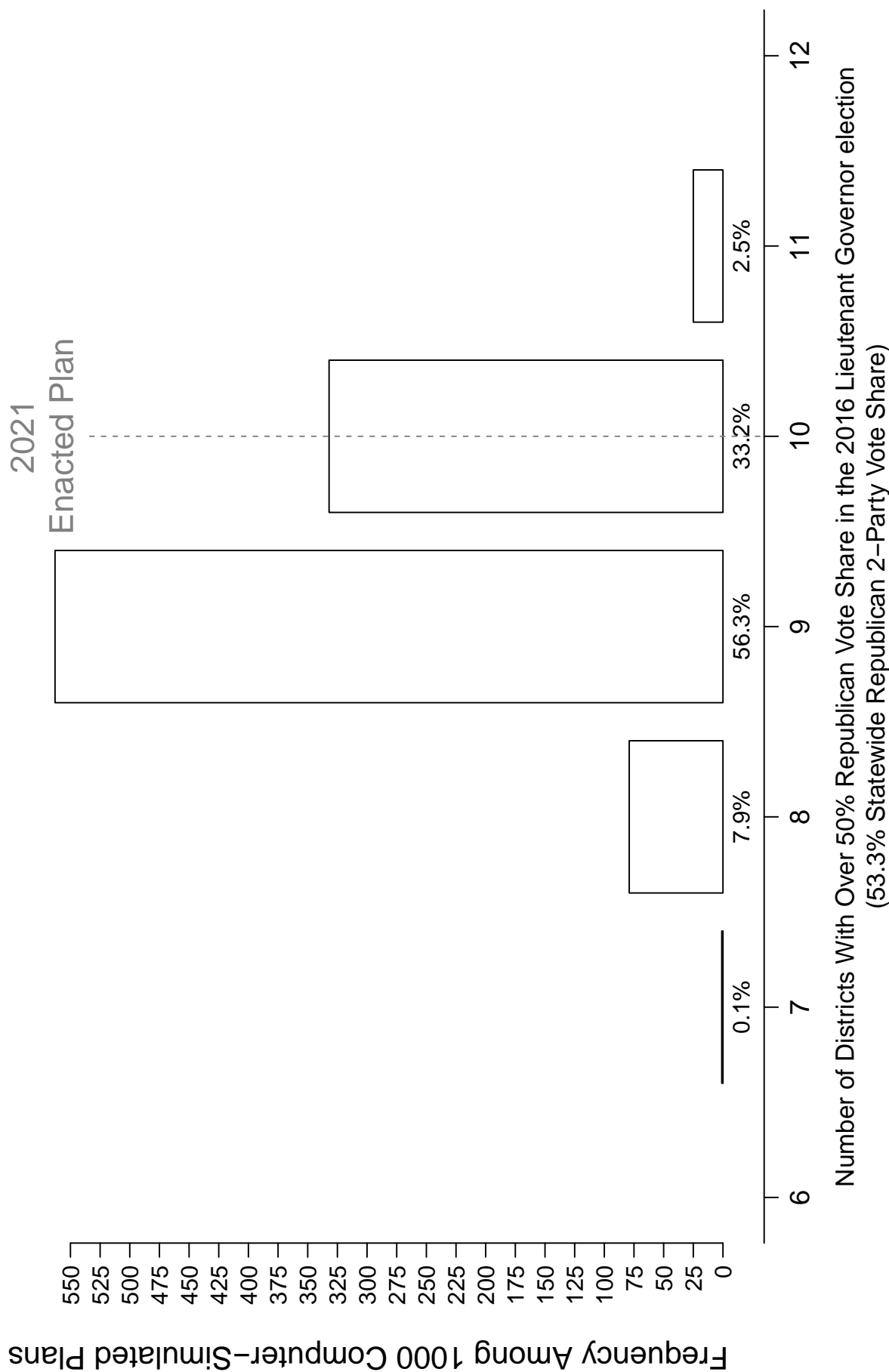


Figure B4: Comparisons of Enacted SB 740 Plan to 1,000 Computer-Simulated Plans
Number of Districts With Over 50% Republican Vote Share in the 2016 US President election
(51.9% Statewide Republican 2-Party Vote Share)

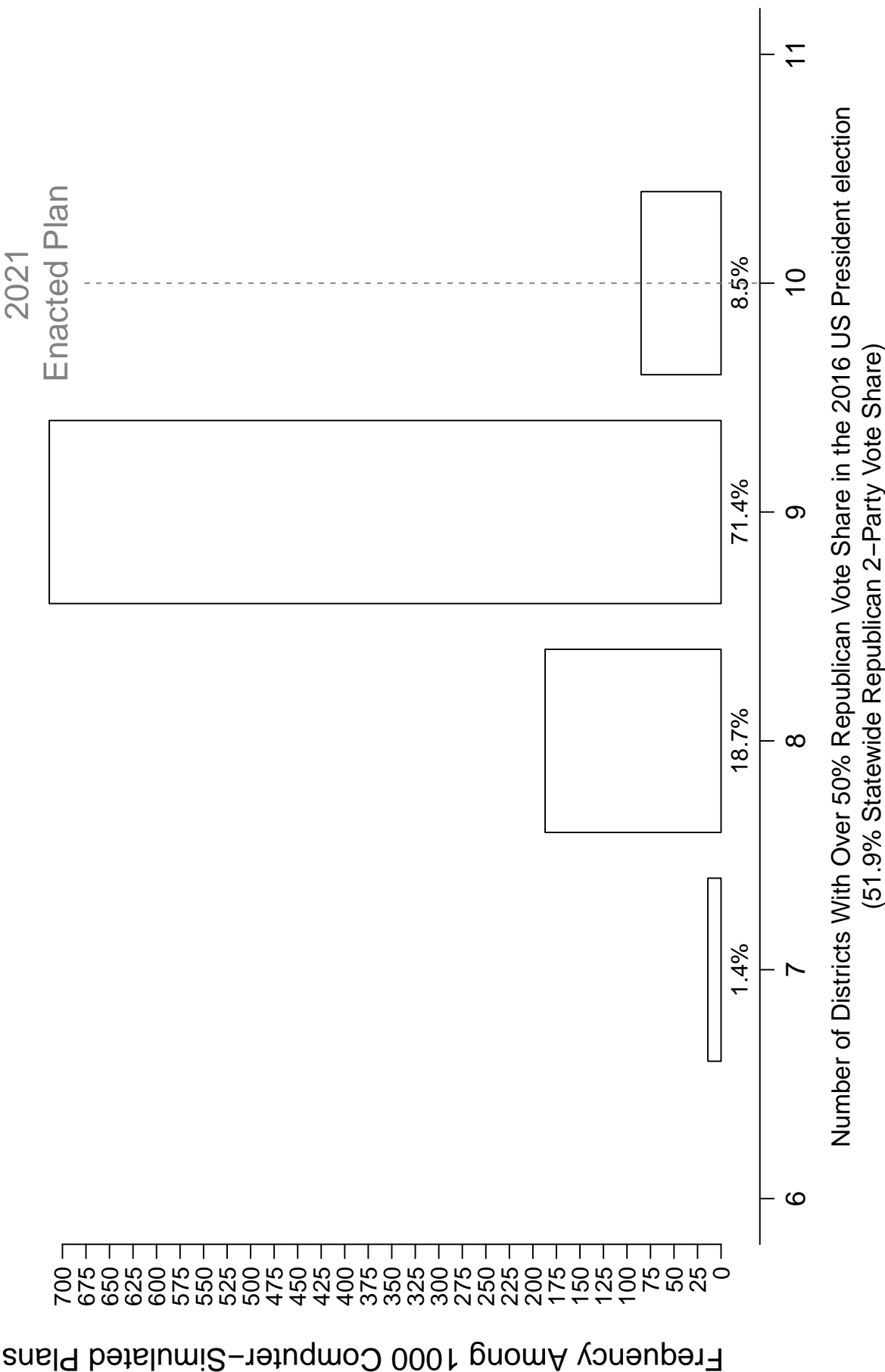
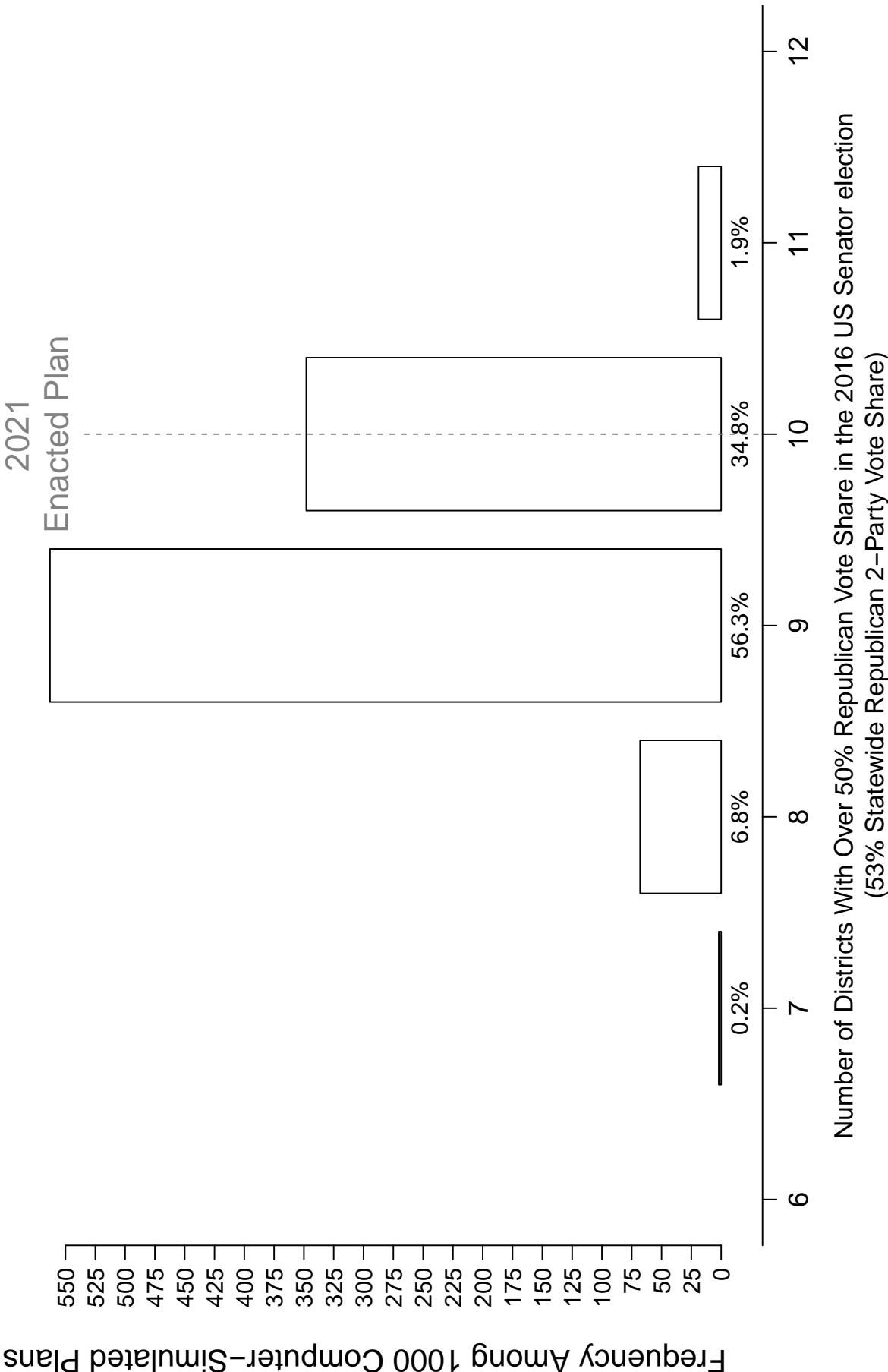
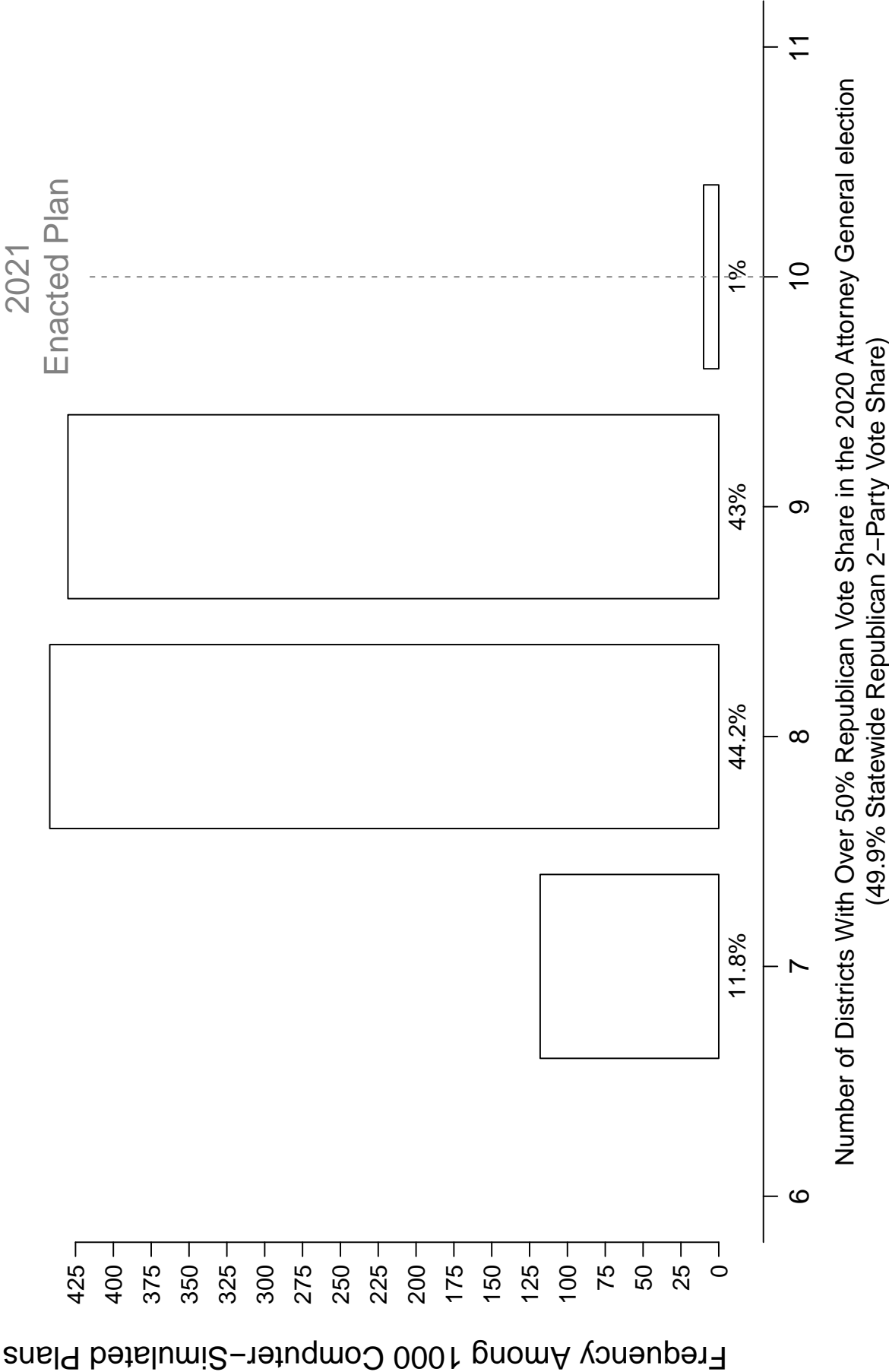


Figure B5: Comparisons of Enacted SB 740 Plan to 1,000 Computer-Simulated Plans
Number of Districts With Over 50% Republican Vote Share in the 2016 US Senator election
(53% Statewide Republican 2-Party Vote Share)



**Figure B6: Comparisons of Enacted SB 740 Plan to 1,000 Computer-Simulated Plans
Number of Districts With Over 50% Republican Vote Share in the 2020 Attorney General election
(49.9% Statewide Republican 2-Party Vote Share)**



**Figure B7: Comparisons of Enacted SB 740 Plan to 1,000 Computer-Simulated Plans
Number of Districts With Over 50% Republican Vote Share in the 2020 Governor election
(47.7% Statewide Republican 2-Party Vote Share)**

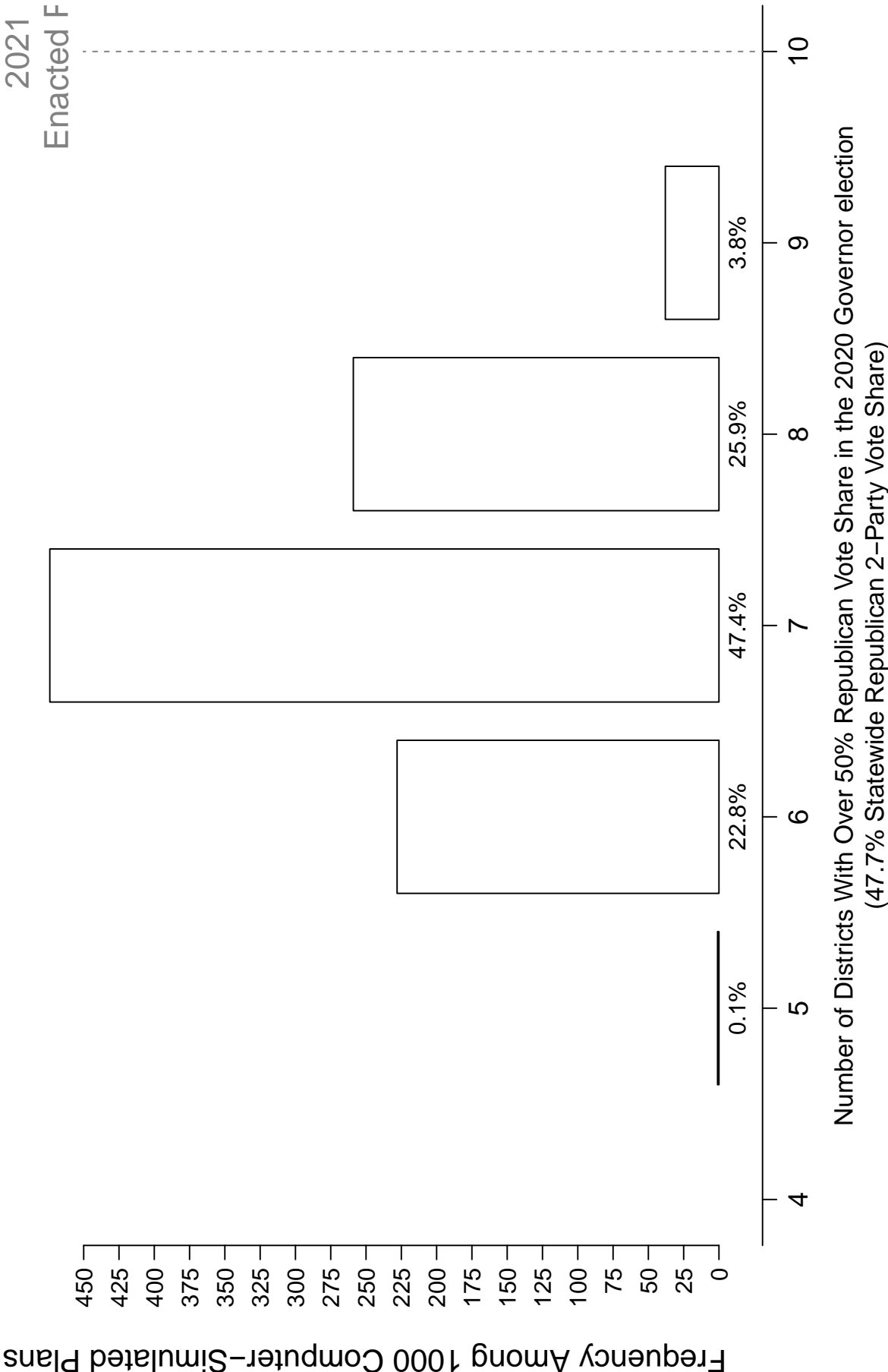


Figure B8: Comparisons of Enacted SB 740 Plan to 1,000 Computer-Simulated Plans
Number of Districts With Over 50% Republican Vote Share in the 2020 Lieutenant Governor election
(51.6% Statewide Republican 2-Party Vote Share)

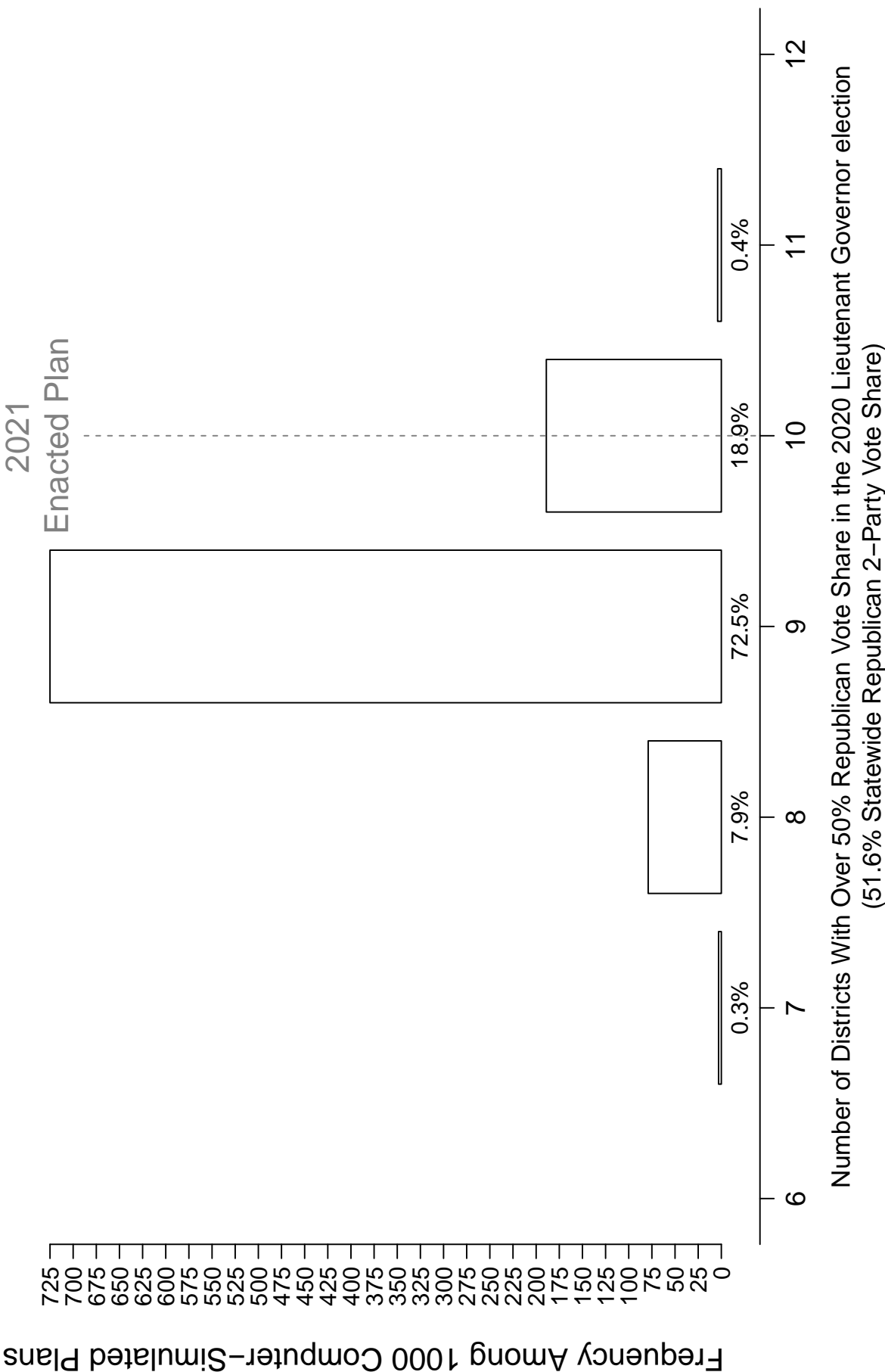


Figure B9: Comparisons of Enacted SB 740 Plan to 1,000 Computer-Simulated Plans
Number of Districts With Over 50% Republican Vote Share in the 2020 US President election
(50.7% Statewide Republican 2-Party Vote Share)

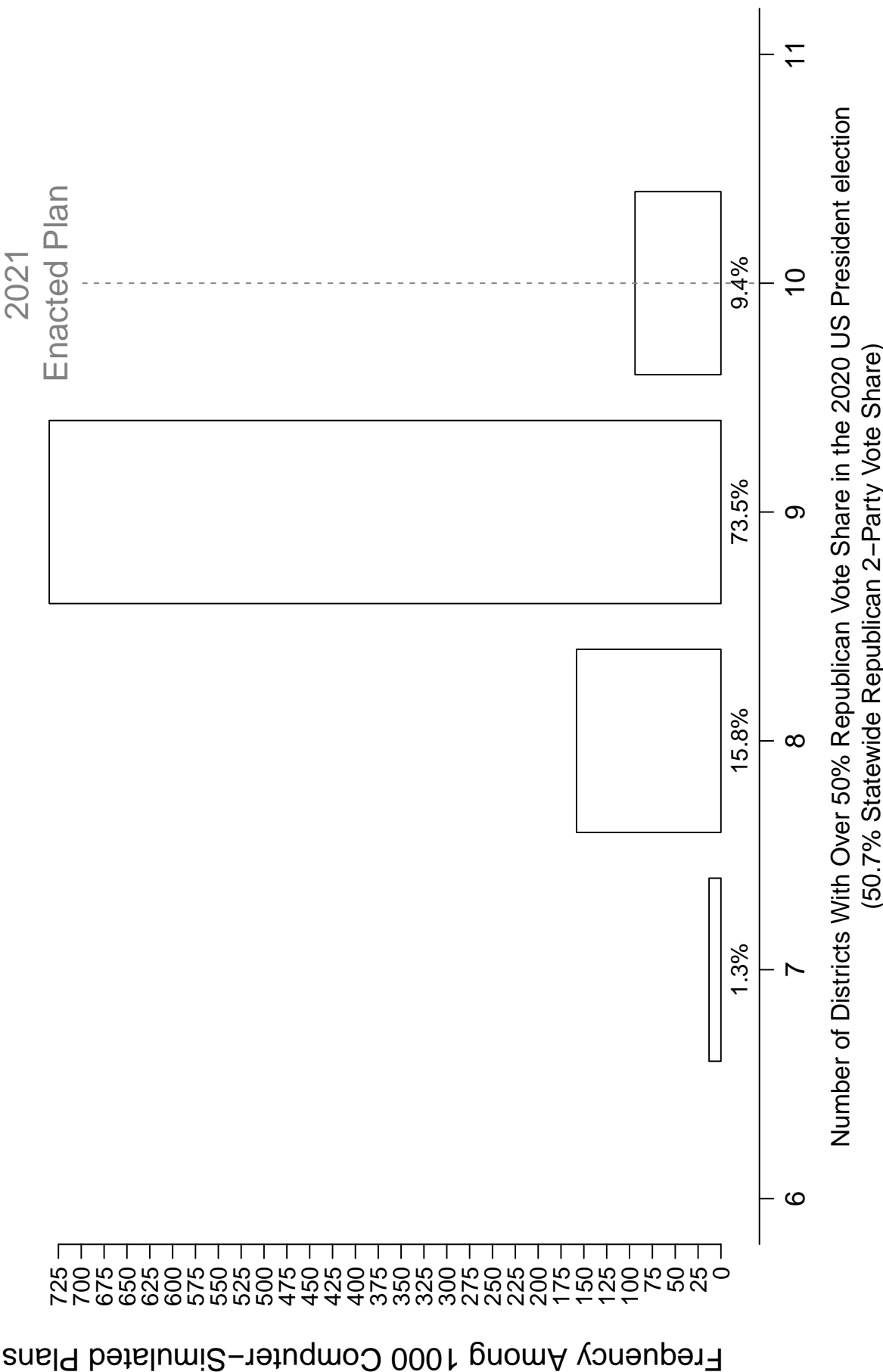
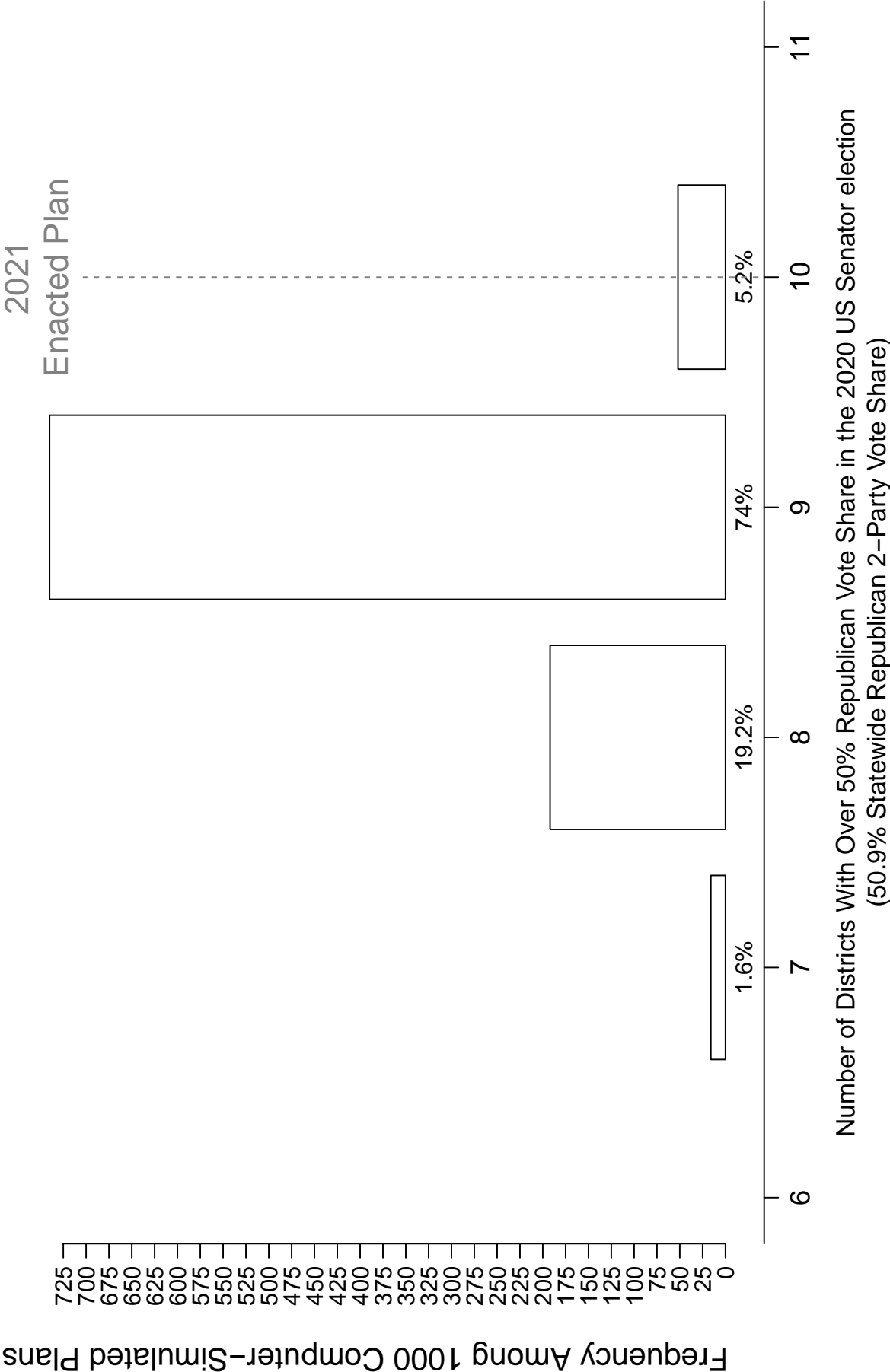


Figure B10: Comparisons of Enacted SB 740 Plan to 1,000 Computer-Simulated Plans
Number of Districts With Over 50% Republican Vote Share in the 2020 US Senator election
(50.9% Statewide Republican 2-Party Vote Share)



Electronically Filed
2021-11-30 14:15:41

Preliminary analysis of SL 2021-174 Congressional districting

Wesley Pegden

November 29, 2021

1 Qualifications

I am an associate professor in the department of Mathematical Sciences at Carnegie Mellon University, where I have been a member of the faculty since 2013. I received my Ph.D. in Mathematics from Rutgers University in 2010 under the supervision of József Beck, and I am an expert on stochastic processes and discrete probability. My research has been funded by the National Science Foundation and the Sloan Foundation. A list of my publications with links to online manuscripts is also available at my website at <http://math.cmu.edu/~wes>. I am an expert on the use of Markov Chains for the rigorous analysis of gerrymandering, and have published papers^[1] developing techniques for this application in *Proceedings of the National Academy of Sciences* and *Statistics and Public Policy*, hereafter referred to by [CFP] and [CFMP], respectively.

I testified as an expert witness in the *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania* case in which the 2011 Congressional districting was found to be an unconstitutional partisan gerrymander, and as well as the *Common Cause v. Lewis* case in North Carolina. I previously served as a member of the bipartisan Pennsylvania Redistricting Reform Commission under appointment by the governor.

2 Executive Summary

I was asked to conduct a preliminary analysis of whether the S.L. 2021-174 Congressional Districting passed in North Carolina drawn in a way which made extreme use of partisan considerations.

To conduct my analysis, I take the enacted plan as a starting point and make a sequence of many small random changes to the district boundaries. This methodology is intended to detect whether the district lines were carefully drawn to optimize partisan considerations; in particular, if the plans in question were not intentionally drawn to maximize partisan advantage, then making small random changes should not significantly decrease the plan's partisan bias.

Specifically, my method begins with the enacted plan and uses a Markov Chain—a sequence of random changes—to generate billions of comparison districtings against which I compare the enacted plans. These comparison districtings are generated by making a sequence of small random changes to the enacted plans themselves, and preserve districting criteria such as population deviation, compactness, and splitting of counties.

The analysis I conduct of the enacted plan using this data has two levels. The first level of my analysis consists simply of comparing the partisan properties of the enacted plans to the large sets of comparison maps produced by my Markov Chain, and I report how unusual the enacted plans are with respect to their partisan properties, against this comparison set. **Quantitatively, I find the enacted S.L. 2021-174 Congressional plan exhibits greater partisan bias than 99.99% of the billions of comparison districtings of North Carolina produced by my algorithm.**

[1]

- M. Chikina, A. Frieze, W. Pegden. Assessing significance in a Markov Chain without mixing, in *Proceedings of the National Academy of Sciences* **114** (2017) 2860–2864
- M. Chikina, A. Frieze, J. Mattingly, W. Pegden. Separating effect from significance in Markov chain tests, in *Statistics and Public Policy* **7** (2020) 101–114.

The next level of my analysis uses the mathematical results I have developed with my co-authors in [CFP] and [CFMP] to translate the results of the above comparison into a statement about how the enacted plans compare against *all* other districtings of North Carolina satisfying the districting criteria I consider in this report. In other words, the theorem that I use in the second level analysis allows me to compare the enacted plan against not only the billions of plans that my simulations produce through making small random changes, but also against all other possible districtings of North Carolina satisfying the districting criteria I consider.

Consider the following: when I make a sequence of small random changes to an enacted plan as described above, this can be viewed as a test of whether the partisan bias in the current districting is fragile, in the sense that it evaporates when the boundary lines of the district are perturbed. The theorems proved in [CFP] and [CFMP] establish that it is mathematically impossible for the political geography of a state to cause such a result. That is: while political geography might conceivably interact with districting criteria to create a situation where typical districtings of a state are biased in favor of one party, it is mathematically impossible for the political geography of a state to interact with districting criteria to create a situation where typical districtings of a state exhibit a *fragile* or *optimized* partisan bias, which quickly evaporates when small changes are made. This allows us to rigorously demonstrate that a districting is optimized with respect to partisanship, and is an outlier among *all* districtings of a state satisfying the criteria I consider, with respect to this property.

2.1 Comparison Criteria

The comparison districtings used by method are required to satisfy various criteria in ways that constrain them to be similar in several respects to the enacted map being evaluated. For the preliminary analysis, all comparison maps were constrained to have population deviation at most 2%, and to have compactness scores at good as the enacted map, up to an error of at most 2%, no more precinct splits than the enacted map, and no more county traversals than the enacted map. These restrictions are denoted “conditions A” in the results below. I also conducted three additional tests which additionally constrain the number of municipality splits (“conditions B”), additionally constrain incumbents protected by the enacted map to be protected by all comparison maps (“conditions C”), or additionally constrain both (“conditions D”).

2.2 Note on Population Deviation

My method does not simulate the results of elections for hypothetical elections at the per-person level, and thus do not enforce 1-person population deviation on districts (instead using a cutoff like 2%, as described above), as direct voter preference data is not available at sufficient granularity. Note that this same limitation faces mapmakers who might try to draw a favorable districting for their party; a practical approach is to first use the available data to draw a “coarse” map with the desired properties, and then make small changes to the map (e.g., which split VTDs) to satisfy the population constraint.

I verify that the distinction between 1-person and 2% population deviation do not drive the results of my analysis in two ways.

First, I simply redo my most constrained analysis (“Conditions D”) with a 1% population deviation constraint, and obtain similar results.

Second, I analyze a course VTD-level version of the enacted map (itself with nearly 2% population deviation), and show that even this coarse version of the enacted map is an extreme outlier with respect to partisan bias, before small changes are made to it to produce the enacted 1-person-deviation map. This demonstrates that the course VTD-level “blueprint” for the map is an extreme outlier, optimized for partisan considerations, among alternative VTD-level maps with similar population deviation, even before the small changes used to achieve 1-person deviation are accounted for.

These results are shown in Section 3.

2.3 Election data

The partisan characteristics of each of the billions of maps generated by my algorithm is compared to that of the enacted map through the lens of historical election data. I use the 2020 Attorney General race as

a proxy for expected partisan voting patterns given knowledge available at the time the disputed plan was drawn.

2.4 Comparison metric

Using the election data indicated above, my analysis compares the partisanship of districtings according to **the average number of seats Republicans would expect to win in the districting**, based on a random uniform swing model with the historical voting data I use.

The *uniform swing* is a simple model frequently used to make predictions about the number of seats a party might win in an election, based on partisan voting data. Suppose, for example, that given data from a previous Congressional election in North Carolina, we would like to predict how many seats Republicans will win in an upcoming Congressional election with the same districting, assuming that at a statewide level, we expect them to outperform by 1.5 percentage points their results from the last election.

A uniform swing would simply add 1.5 percentage points to Republican performance in every district in data from the last election, and then evaluate how many seats would be won with these shifted voting outcomes.

When I am evaluating the partisanship of a comparison districting (to compare it to the enacted plan), I am interested in the number of seats we expect Republicans might win in the districting, given unknown shifts in partisan support. In particular, the metric I use is:

How many seats, on average, would Republicans win in the given districting, if a random^[2] uniform swing is applied to the historical voting data being used?

2.5 First level analysis

The first level of my analysis simply uses the procedure described above to generate a large set of comparison districtings against which one can compare the enacted plan. As discussed above, these comparison maps adhere to districting criteria in ways that constrain them to be similar in several respects to the enacted map being evaluated.

We will see below that in hundreds of runs of my algorithm, the enacted plan is found to exhibit more partisan bias than 99.99% of comparison maps, i.e., it is among the most partisan 0.01% of found by the algorithm, since $100\% - 99.99\% = 0.01\%$.

The first level of my analysis simply reports the comparison of the enacted map to the comparison districtings produced in these runs. Even without applying the mathematical theorems we have developed in [CFP] and [CFMP], this gives strong, intuitively clear evidence of intent to create partisan bias in the districting: if the districting had not been drawn to carefully optimize its partisan bias, we would expect naturally that making small random changes to the districting would not have such a dramatic and consistent partisan effect.

2.6 Second level analysis

In the first level of my analysis, I compare enacted plans to comparison districtings produced by my algorithm (which makes random changes to the existing map while preserving districting criteria).

The next level of my analysis goes further than this, and enables a rigorous comparison to *all* alternative districtings of North Carolina satisfying the districting criteria I consider here. It does this by comparing how optimized for partisanship an evaluated plan is to how optimized alternative plans are.

2.6.1 Defining “optimized for partisanship”

Roughly speaking, when I say that a districting is *optimized for partisanship*, I mean that its partisan characteristics are highly sensitive to small random changes to the boundary lines.

^[2]The random choice of my uniform swing is made from a normal distribution whose standard deviation is 4 percentage points, which is roughly the standard deviation of the swing in the past five North Carolina gubernatorial elections.

Formally, when I say that a districting is *optimized for partisanship* in this report, I mean that there is a high probability that when I make small random changes to the districting, its partisanship will be an extreme outlier among the comparison maps produced by the small random changes.

The yardstick I use to measure this property of a given map is the ε -*fragility* of a map. Given a small threshold ε like $\varepsilon = 00.01\%$, I can ask: what is the probability that when I make a sequence of small random changes to the map, the map will be in the most extreme ε fraction of maps encountered in the sequence of random changes? The probability of this occurrence is the ε -fragility of the map, and it is this probability that I use to quantify how optimized for partisanship a map is.

In other words, **one districting is considered more optimized for partisanship than another if it is more likely to have its partisan qualities consistently reduced when making a random sequence of small changes to its boundary lines.**

2.6.2 Comparing an enacted plan to the set of *all* alternatives

My analysis enables a rigorous comparison of an enacted plan to **all possible districting plans of the state** satisfying the districting criteria I consider, with respect to how optimized for partisanship the districtings are.

My method produces a rigorous p -value (statistical significance level) which precisely captures the confidence one can have in the findings of my “second level” analyses. In particular my second-level claims in this report are all valid at a statistical significance of $p = .002$. This means that the probability that I would report an incorrect number (for example, claiming that a districting is among the most optimized for partisanship 00.01% of all districtings, when in fact it is merely among the most 00.015% optimized for partisanship) is at most 00.2%. To put this in context, clinical trials seeking regulatory approval for new medications frequently target a significance level of $p = .05$ (5%), a much looser standard than I hold myself to in this report.

2.6.3 Some intuition for why this is possible

It should be emphasized that it may seem remarkable that I can make a rigorous quantifiable comparison to *all* possible districtings, without actually generating all such districtings; this is the role of our theorems from [CFP] and [CFMP], which have simple proofs which have been verified by the mathematical community.

To give some nontechnical intuition for why this kind of analysis is possible, these results roughly work by showing that in a very general sense, it is not possible for an appreciable fraction of districtings of a state to appear optimized for partisanship in the sense defined in Section 2.6.1. In other words, it is *mathematically impossible* for any state, with any political geography of voting preferences and any choice of districting criteria, to have the property that a significant fraction of the possible districtings of the state satisfying the chosen districting criteria appear optimized for partisanship (as measured by their ε -fragility).

2.7 Results

For each of the four conditions described in 2.1, I did $2^{35} \approx 34$ billion steps. In this section I give the first-level and second-level analyses of these results, along with the output of each run.

2.7.1 Conditions A

Run	Percentage of comparison maps less partisan than enacted plan	Run	Percentage of comparison maps less partisan than enacted plan	Run	Percentage of comparison maps less partisan than enacted plan	Run	Percentage of comparison maps less partisan than enacted plan
1	99.999943%	9	99.999943%	17	99.99971%	25	99.9998%
2	99.999973%	10	99.999908%	18	99.999987%	26	99.999953%
3	99.99978%	11	99.99972%	19	99.99992%	27	99.999962%
4	99.9998%	12	99.99933%	20	99.9994%	28	99.99964%
5	99.999901%	13	99.999927%	21	99.999988%	29	99.999979%
6	99.99967%	14	99.999962%	22	99.99904%	30	99.99964%
7	99.999985%	15	99.999983%	23	99.9999965%	31	99.9989%
8	99.999908%	16	99.99977%	24	99.999986%	32	99.999976%

- **First level analysis:** In *every* run, the districting was in the most partisan 00.0011% of districtings (in other words, 99.9989% were less partisan, in *every* run).
- **Second level analysis:** My theorems imply that the enacted Congressional districting is among the most optimized-for-partisanship 00.003% of all alternative districtings of North Carolina satisfying my districting criteria (in other words, 99.997% are less optimized for partisanship), measured by their ε -fragility for $\varepsilon = 00.0011\%$.

2.7.2 Conditions B

Run	Percentage of comparison maps less partisan than enacted plan	Run	Percentage of comparison maps less partisan than enacted plan	Run	Percentage of comparison maps less partisan than enacted plan	Run	Percentage of comparison maps less partisan than enacted plan
1	99.999989%	9	99.9995%	17	99.999943%	25	99.9978%
2	99.9986%	10	99.9999981%	18	99.99982%	26	99.999915%
3	99.99962%	11	99.999955%	19	99.99929%	27	99.99957%
4	99.999901%	12	99.999959%	20	99.9985%	28	99.99998%
5	99.999914%	13	99.99988%	21	99.99945%	29	99.999972%
6	99.999982%	14	99.9988%	22	99.99976%	30	99.999935%
7	99.99986%	15	99.999964%	23	99.99979%	31	99.99964%
8	99.999926%	16	99.9989%	24	99.999996%	32	99.999958%

- **First level analysis:** In *every* run, the districting was in the most partisan 00.0021% of districtings (in other words, 99.9979% were less partisan, in *every* run).
- **Second level analysis:** My theorems imply that the enacted Congressional districting is among the most optimized-for-partisanship 00.0063% of all alternative districtings of North Carolina satisfying my districting criteria (in other words, 99.9937% are less optimized for partisanship), measured by their ε -fragility for $\varepsilon = 00.0021\%$.

2.7.3 Conditions C

Run	Percentage of comparison maps less partisan than enacted plan	Run	Percentage of comparison maps less partisan than enacted plan	Run	Percentage of comparison maps less partisan than enacted plan	Run	Percentage of comparison maps less partisan than enacted plan
1	99.999998%	9	99.999938%	17	99.999965%	25	99.9999941%
2	99.99964%	10	99.99982%	18	99.99945%	26	99.99982%
3	99.9978%	11	99.99987%	19	99.999924%	27	99.999957%
4	99.9995%	12	99.99984%	20	99.99987%	28	99.99984%
5	99.99998%	13	99.99921%	21	99.999956%	29	99.99987%
6	99.99979%	14	99.99961%	22	99.99949%	30	99.99955%
7	99.999979%	15	99.99972%	23	99.99962%	31	99.99988%
8	99.99982%	16	99.999921%	24	99.99938%	32	99.99984%

- **First level analysis:** In *every* run, the districting was in the most partisan 00.0022% of districtings (in other words, 99.9978% were less partisan, in *every* run).
- **Second level analysis:** My theorems imply that the enacted Congressional districting is among the most optimized-for-partisanship 00.0065% of all alternative districtings of North Carolina satisfying my districting criteria (in other words, 99.9935% are less optimized for partisanship), measured by their ε -fragility for $\varepsilon = 00.0022\%$.

2.7.4 Conditions D

Run	Percentage of comparison maps less partisan than enacted plan	Run	Percentage of comparison maps less partisan than enacted plan	Run	Percentage of comparison maps less partisan than enacted plan	Run	Percentage of comparison maps less partisan than enacted plan
1	99.9997%	9	99.99976%	17	99.99958%	25	99.99979%
2	99.99989%	10	99.999924%	18	99.999942%	26	99.999986%
3	99.99962%	11	99.99982%	19	99.99963%	27	99.9978%
4	99.99976%	12	99.9999986%	20	99.9999983%	28	99.99969%
5	99.99988%	13	99.99979%	21	99.99954%	29	99.9995%
6	99.99958%	14	99.999986%	22	99.999904%	30	99.999984%
7	99.999986%	15	99.99954%	23	99.99989%	31	99.999955%
8	99.999956%	16	99.999965%	24	99.99971%	32	99.999962%

- **First level analysis:** In *every* run, the districting was in the most partisan 00.0022% of districtings (in other words, 99.9978% were less partisan, in *every* run).
- **Second level analysis:** My theorems imply that the enacted Congressional districting is among the most optimized-for-partisanship 00.0065% of all alternative districtings of North Carolina satisfying my districting criteria (in other words, 99.9935% are less optimized for partisanship), measured by their ε -fragility for $\varepsilon = 00.0022\%$.

3 Conclusion

Based on my analysis, I find the enacted S.L. 2021-174 Congressional plan is optimized for Republican partisan bias to an extreme degree, moreso than 99.99% of all alternative districtings satisfying the criteria I examined in this report.

Appendix: Population deviation analysis

In this section we show results from running our algorithm under conditions discussed in Section 2.2.

First, we use the most restrictive “Conditions D” but impose a requirement of $\leq 1\%$ population deviation, obtaining the following results:

Run	Percentage of comparison maps less partisan than enacted plan	Run	Percentage of comparison maps less partisan than enacted plan	Run	Percentage of comparison maps less partisan than enacted plan	Run	Percentage of comparison maps less partisan than enacted plan
1	99.9986%	9	99.99947%	17	99.9975%	25	99.99907%
2	99.99939%	10	99.99987%	18	99.999928%	26	99.99969%
3	99.999961%	11	99.99958%	19	99.99973%	27	99.99984%
4	99.99923%	12	99.9999969%	20	99.99929%	28	99.9996%
5	99.99963%	13	99.9999%	21	99.99916%	29	99.999998%
6	99.9998%	14	99.99989%	22	99.99922%	30	99.99983%
7	99.9989%	15	99.99982%	23	99.9988%	31	99.998%
8	99.999911%	16	99.9988%	24	99.99934%	32	99.99945%

Next, we run our algorithm on a coarse “whole-precinct” version of the enacted map. This is the districting obtained by assigning each split VTD to the district with which its intersection is greatest, and is a coarse starting point from which one can obtain a 1-person deviation map by carefully splitting VTD’s. Its population deviation from ideal is 1.8%. In the results below, we see that this coarse version of the enacted map also exhibits extreme partisan bias, demonstrating that the appearance of partisan bias is not created by the maps adherence to strict constraints on population deviation.

Run	Percentage of comparison maps less partisan than enacted plan	Run	Percentage of comparison maps less partisan than enacted plan	Run	Percentage of comparison maps less partisan than enacted plan	Run	Percentage of comparison maps less partisan than enacted plan
1	99.99937%	9	99.99942%	17	99.99942%	25	99.99939%
2	99.99949%	10	99.99917%	18	99.9997%	26	99.99941%
3	99.9989%	11	99.99942%	19	99.99988%	27	99.99992%
4	99.99921%	12	99.9989%	20	99.99987%	28	99.99986%
5	99.9982%	13	99.99926%	21	99.99976%	29	99.99981%
6	99.99924%	14	99.999904%	22	99.99969%	30	99.999903%
7	99.9995%	15	99.99972%	23	99.99904%	31	99.99954%
8	99.99976%	16	99.9996%	24	99.99976%	32	99.99951%

I hereby certify that the foregoing statements are true and correct to the best of my knowledge, information, and belief.



Wesley Pegden
11/29/21

Electronically Filed
2021-11-30 14:15:41

AFFIDAVIT

I, John Anthony Balla, hereby state that I am a Plaintiff in the above-titled action. I am a digital marketing strategist residing in Raleigh, North Carolina. My residence was located within District 4 under the 2016 Plan and is now located within District 5 under the 2021 Plan. I am a registered Democrat and have consistently voted for Democratic candidates for the U.S. House of Representatives.



John Anthony Balla

Sworn and subscribed before me this the 10 day of November, 2021.


Notary Public: Angel Frink
Name: Angel Frink
My commission expires: 5/2/2026




Electronically Filed
2021-11-30 14:15:41

AFFIDAVIT

I, Kathleen Barnes, hereby state that I am a Plaintiff in the above-titled action. I am the owner of a small publishing company residing in Brevard, North Carolina. My residence was located within Congressional District 11 under the 2016 Plan and is now located within District 14 under the 2021 Plan. I am a registered Democrat and have consistently voted for Democratic candidates for the U.S. House of Representatives.

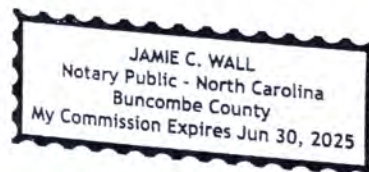

Kathleen Barnes

Sworn and subscribed before me this the 10th day of November, 2021.

Notary Public: 

Name: Jamie C. Wall


My commission expires: June 30th, 2025



Electronically Filed
2021-11-30 14:15:41


AFFIDAVIT

I, Virginia Walters Brien, hereby state that I am a Plaintiff in the above-titled action. I am a sales manager residing in Charlotte, North Carolina. My residence was located within Congressional District 12 under the 2016 Plan and is now located within District 9 under the 2021 Plan. I am a registered unaffiliated voter and have consistently voted for Democratic candidates for the U.S. House of Representatives.


Virginia Walters Brien

Sworn and subscribed before me this the 09 day of November, 2021.



Notary Public: 
Name: Michelle Rivers
My commission expires: August 22, 2023

Electronically Filed
2021-11-30 14:15:41

AFFIDAVIT

I, David Dwight Brown, hereby state that I am a Plaintiff in the above-titled action. I am a retired computer systems analyst residing in Greensboro, North Carolina. My residence was located within Congressional District 13 under the 2016 Plan and is now located within District 11 under the 2021 Plan. I am a registered Democrat and have consistently voted for Democratic candidates for the U.S. House of Representatives.

David Dwight Brown
David Dwight Brown

Sworn and subscribed before me this the 12 day of November, 2021.



Notary Public: Katie Marie Gritton

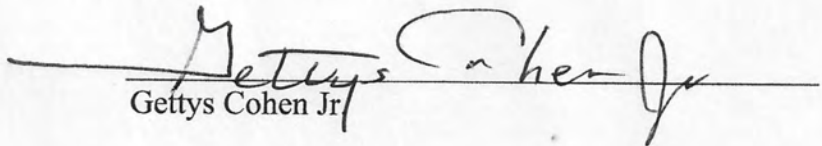
Name: Katie Marie Gritton

My commission expires: November 6, 2024

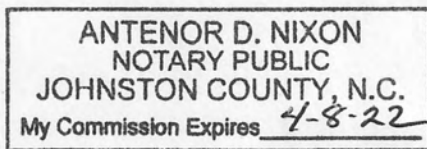
Electronically Filed
2021-11-30 14:15:41

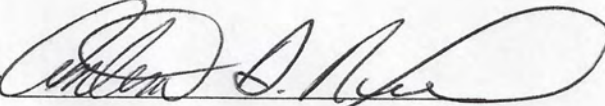
AFFIDAVIT

I, Gettys Cohen Jr., hereby state that I am a Plaintiff in the above-titled action. I am a dentist residing in Smithfield, North Carolina. My residence was located within Congressional District 7 under the 2016 Plan and is now located within District 4 under the 2021 Plan. I am a registered Democrat and have consistently voted for Democratic candidates for the U.S. House of Representatives.


Gettys Cohen Jr

Sworn and subscribed before me this the 10 day of November, 2021.



Notary Public: 

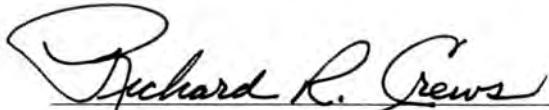
Name: Antenor D. Nixon

My commission expires: 4-8-22

Electronically Filed
2021-11-30 14:26:29


AFFIDAVIT

I, Richard R. Crews, hereby state that I am a Plaintiff in the above-titled action. I am a retired stockbroker residing in Newland, North Carolina. My residence was located within Congressional District 5 under the 2016 Plan and is now located within District 14 under the 2021 Plan. I am a registered Democrat and have consistently voted for Democratic candidates for the U.S. House of Representatives.


Richard R. Crews

Sworn and subscribed before me this the 12th day of November, 2021.



Notary Public: 
Name: Felece Prather
My commission expires: July 5th 2025

Send to : SAM.CALLAHAN@ARNOLDporter.com

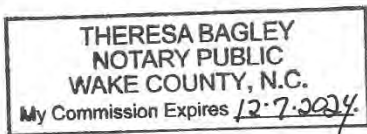
Electronically Filed
2021-11-30 14:26:29

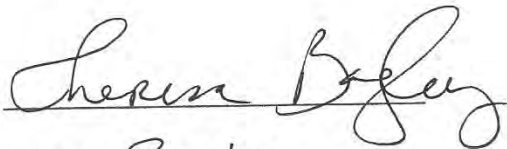
AFFIDAVIT

I, Rebecca Harper, hereby state that I am a Plaintiff in the above-titled action. I am a real estate agent residing in Cary, North Carolina. My residence was located within Congressional District 2 under the 2016 Plan and is now located within District 6 under the 2021 Plan. I am a registered Democrat and have consistently voted for Democratic candidates for the U.S. House of Representatives.


Rebecca Harper

Sworn and subscribed before me this the 11th day of November, 2021.



Notary Public: 
Name: Theresa Bagley
My commission expires: 12.7.2024

Electronically Filed
2021-11-30 14:26:29

AFFIDAVIT

I, Amy Clare Oseroff, hereby state that I am a Plaintiff in the above-titled action. I am a retired teacher residing in Greenville, North Carolina. My residence was located within Congressional District 1 under the 2016 Plan and remains in District 1 under the 2021 Plan. I am a registered Democrat and have consistently voted for Democratic candidates for the U.S. House of Representatives.


Amy Clare Oseroff

Sworn and subscribed before me this the 9th day of November, 2021.



Notary Public: Ronnie Peo
Name: Ronnie Peo
My commission expires: February 10, 2023

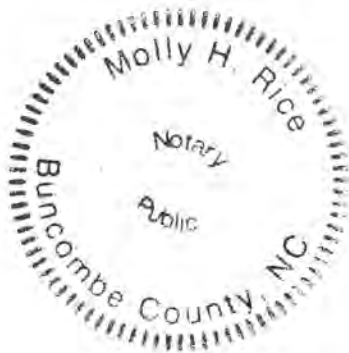
Electronically Filed
2021-11-30 14:26:29

AFFIDAVIT

I, Mark S. Peters, hereby state that I am a Plaintiff in the above-titled action. I am a retired physician assistant residing in Fletcher, North Carolina. My residence was located within Congressional District 10 under the 2016 Plan and is now located within District 14 under the 2021 Plan. I am registered as an unaffiliated voter and have consistently voted for Democratic candidates for the U.S. House of Representatives.


Mark S. Peters

Sworn and subscribed before me this the 12 day of November, 2021.

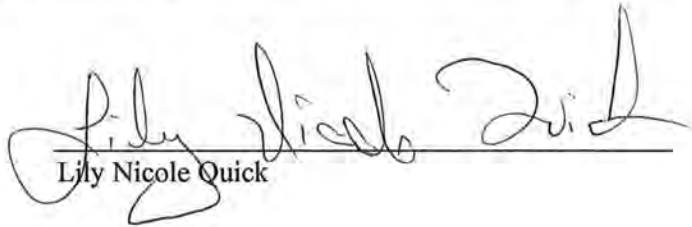


Notary Public: Molly H. Rice
Name: Molly H. Rice
My commission expires: 9.20.22

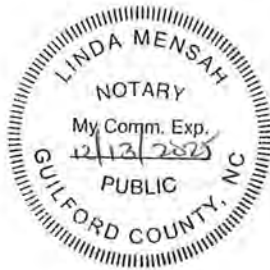
Electronically Filed
2021-11-30 14:26:29


AFFIDAVIT

I, Lily Nicole Quick, hereby state that I am a Plaintiff in the above-titled action. I am a homemaker residing in Greensboro, North Carolina. My residence was located within Congressional District 6 under the 2016 Plan and is now located within District 7 under the 2021 Plan. I am a registered Democrat and have consistently voted for Democratic candidates for the U.S. House of Representatives.


Lily Nicole Quick

Sworn and subscribed before me this the 10th day of November, 2021.

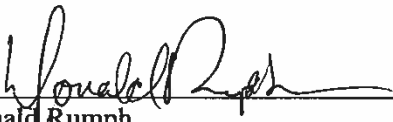


Notary Public: 
Name: Linda Mensah
My commission expires: 12/13/2025

Electronically Filed
2021-11-30 14:26:29

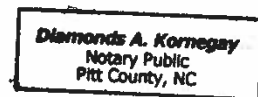
AFFIDAVIT

I, Donald Rumph, hereby state that I am a Plaintiff in the above-titled action. I am an Army and Air Force combat veteran and retired registered nurse residing in Greenville, North Carolina. My residence was located within Congressional District 3 under the 2016 Plan and is now located within District 1 under the 2021 Plan. I am a registered Democrat and have consistently voted for Democratic candidates for the U.S. House of Representatives.


Donald Rumph

Sworn and subscribed before me this the 9 day of November, 2021.

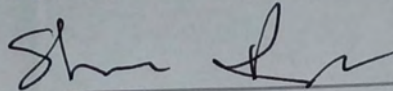
Notary Public: Diamonds A. Komegay
Name: Diamonds A. Komegay
My commission expires: 4/19/2024



Electronically Filed
2021-11-30 14:26:29

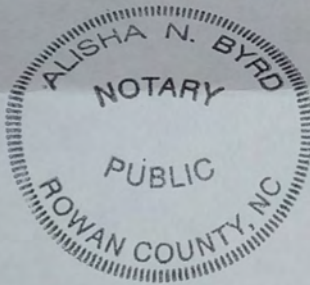
AFFIDAVIT

I, Shawn Rush, hereby state that I am a Plaintiff in the above-titled action. I am a part owner of a marketing firm and a Meals on Wheels organizer residing in East Spencer, North Carolina. My residence was located within Congressional District 8 under the 2016 Plan and is now located within District 10 under the 2021 Plan. I am a registered Democrat and have consistently voted for Democratic candidates for the U.S. House of Representatives.



Shawn Rush

Sworn and subscribed before me this the 14th day of November, 2021.



Notary Public: Alisha N. Byrd

Name: Alisha N. Byrd

My commission expires: 04/25/2022

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, INC.;
HENRY M. MICHAUX, JR., et al.,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

**BRIEF IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
INTRODUCTION	1
BACKGROUND	5
A. The Law Governing Redistricting in North Carolina	5
B. <i>Common Cause</i> and <i>Harper</i>	6
C. The 2021 Redistricting Process	8
D. This Suit and Plaintiffs’ Motion for a Preliminary Injunction.....	11
LEGAL STANDARD.....	13
ARGUMENT	13
I. Plaintiffs Are Likely to Succeed on the Merits.....	13
A. The North Carolina State Constitution Prohibits Partisan Gerrymandering	14
1. The Free Elections Clause Forbids Partisan Gerrymandering	14
2. The Equal Protection Clause Prohibits Partisan Gerrymandering	17
3. The Free Speech and Free Assembly Clauses Ban Partisan Gerrymandering	19
B. Plaintiffs Are Likely to Succeed in Showing That the Enacted Plans Constitute Unlawful Partisan Gerrymanders.....	23
1. As <i>Common Cause</i> and <i>Harper</i> Recognize, a Key Feature of an Unconstitutional Partisan Gerrymander Is That It Systematically Prevents One Party from Receiving a Majority of Seats Even When It Wins a Majority of Votes.....	23

2. The Enacted Congressional Plan Is an Unconstitutional Partisan Gerrymander	25
3. The Enacted Senate Plan Is an Unconstitutional Partisan Gerrymander	32
4. The Enacted House Plan Is an Unconstitutional Partisan Gerrymander	40
C. Plaintiffs Are Likely to Succeed in Showing That the Enacted Plans’ Partisan Gerrymanders Violate the North Carolina State Constitution.....	46
1. Plaintiffs Are Likely to Succeed in Showing a Violation of the Free Elections Clause.....	46
2. Plaintiffs Are Likely to Succeed in Showing a Violation of the Equal Protection Clause.....	49
3. Plaintiffs Are Likely to Succeed in Showing a Violation of the Free Speech and Free Assembly Clauses	50
D. Plaintiffs Have Standing to Assert All Their Claims	51
II. The Court Should Enjoin Defendants from Using the Enacted Plans in the 2022 Primary Election, as Well as Grant Certain Ancillary Relief	55
A. Absent a Preliminary Injunction, Plaintiffs Will Suffer Irreparable Harm	55
B. The Balance of Equities Also Favors Injunctive Relief.....	56
C. The Court Should Grant Certain Ancillary Relief	58
CONCLUSION.....	61

TABLE OF AUTHORITIES

CASES

<i>A.E.P. Indus., Inc. v. McClure</i> , 308 N.C. 393, 302 S.E.2d 754 (1983)	13, 55–56
<i>Anderson Creek Partners, L.P. v. County of Harnett</i> , 275 N.C. App. 423, 854 S.E.2d 1 (2020)	29
<i>Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett</i> , 564 U.S. 721 (2011)	20, 22
<i>Auto Dealer Res., Inc. v. Occidental Life Ins. Co. of N.C.</i> , 15 N.C. App. 634, 190 S.E.2d 729 (1972)	13
<i>Blankenship v. Bartlett</i> , 363 N.C. 518, 681 S.E.2d 759 (2009)	17
<i>Citizens United v. Fed. Election Comm’n</i> , 558 U.S. 310 (2010)	20
<i>Common Cause v. Lewis</i> , No. 18-CVS-014001, 2019 WL 4569584 (N.C. Super. Ct. Sept. 3, 2019)	1–3, 5–8, 11–21, 23–26, 32–33, 40, 46–54, 56, 58
<i>Common Cause v. Rucho</i> , 318 F. Supp. 3d 777 (M.D.N.C. 2018)	54
<i>Corum v. Univ. of N.C.</i> , 330 N.C. 761, 413 S.E.2d 276 (1992)	14, 20
<i>Council of Alternative Political Parties v. Hooks</i> , 121 F.3d 876 (3d Cir. 1997)	55
<i>Covington v. North Carolina</i> , No. 1:15-CV-399, 2018 WL 604732 (M.D.N.C. Jan. 26, 2018)	56
<i>Covington v. North Carolina</i> , 267 F. Supp. 3d 664 (M.D.N.C. 2017)	60
<i>Covington v. North Carolina</i> , 316 F.R.D. 117 (M.D.N.C. 2016)	7
<i>Davis v. Fed. Election Comm’n</i> , 554 U.S. 724 (2008)	20, 22
<i>Davis v. New Zion Baptist Church</i> , 258 N.C. App. 223, 811 S.E.2d 725 (2018)	51–52
<i>Dickson v. Rucho</i> , 368 N.C. 481, 781 S.E.2d 404 (2015)	5–6, 39–40
<i>Dickson v. Rucho</i> , 367 N.C. 542, 766 S.E.2d 238 (2014)	5
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976)	55
<i>Feltman v. City of Wilson</i> , 238 N.C. App. 246, 767 S.E.2d 615 (2014)	21
<i>Gaffney v. Cummings</i> , 412 U.S. 735 (1973)	3, 49
<i>Order, Harper v. Lewis</i> , No. 19-CVS-012667 (N.C. Super. Ct. Dec. 2, 2019)	57

Order, <i>Harper v. Lewis</i> , No. 19-CVS-012667 (N.C. Super. Ct. Nov. 20, 2019).....	57
Order on Injunctive Relief, <i>Harper v. Lewis</i> , No. 19-CVS-012667, 2019 N.C. Super. LEXIS 122 (Oct. 28, 2019)	2, 4–8, 11–14, 19, 23–24, 46, 48, 52, 56–57, 60
<i>Harris v. McCrory</i> , No. 1:13-CV-949, 2016 WL 6920368 (M.D.N.C. Feb. 9, 2016).....	56
<i>Harris v. McCrory</i> , 159 F. Supp. 3d 600 (M.D.N.C. 2016)	7, 31
Order, <i>Haw River Assembly v. Rao</i> , No. 15-CVS-127 (Super. Ct., Wake Cnty. May 7, 2015).....	14
<i>Hinkle v. Hartsell</i> , 131 N.C. App. 833, 509 S.E.2d 455 (1998)	29
<i>Holmes v. Moore</i> , 270 N.C. App. 7, 840 S.E.2d 244 (2020)	47–49
<i>Keith v. Day</i> , 60 N.C. App. 559, 299 S.E.2d 296 (1983).....	60
<i>League of Women Voters of Mich. v. Johnson</i> , 352 F. Supp. 3d 777 (E.D. Mich. 2018).....	54
<i>League of Women Voters of N.C. v. North Carolina</i> , 769 F.3d 224 (4th Cir. 2014).....	55
<i>League of Women Voters v. Commonwealth</i> , 178 A.3d 737 (Pa. 2018).....	16
<i>Libertarian Party of N.C. v. State</i> , 365 N.C. 41, 707 S.E.2d 199 (2011).....	21
<i>McCullen v. Coakley</i> , 573 U.S. 464 (2014).....	19–20
<i>N.C. State Bar v. DuMont</i> , 304 N.C. 627, 286 S.E.2d 89 (1982)	16
<i>Nev. Comm’n on Ethics v. Carrigan</i> , 564 U.S. 117 (2011)	19
<i>North Carolina v. Covington</i> , 138 S. Ct. 2548 (2018).....	32
<i>Ohio A. Philip Randolph Inst. v. Householder</i> , 373 F. Supp. 3d 978 (S.D. Ohio 2019).....	54
<i>People ex rel. Van Bokkelen v. Canaday</i> , 73 N.C. 198 (1875).....	14, 47
<i>River Birch Assocs. v. City of Raleigh</i> , 326 N.C. 100, 388 S.E.2d 538 (1990)	53
<i>Roberts v. Madison Cnty. Realtors Ass’n, Inc.</i> , 344 N.C. 394, 474 S.E.2d 783 (1996)	13
<i>Rucho v. Common Cause</i> , 139 S. Ct. 2484 (2019)	8
<i>State v. Bishop</i> , 368 N.C. 869, 787 S.E.2d 814 (2016).....	51

<i>State v. Bogle</i> , 324 N.C. 190, 376 S.E.2d 745 (1989).....	48
<i>Stephenson v. Bartlett</i> , 357 N.C. 301, 582 S.E.2d 247 (2003)	5
<i>Stephenson v. Bartlett</i> , 355 N.C. 354, 562 S.E.2d 377 (2002)	5, 17–18, 36, 40
<i>Vieth v. Jubelirer</i> , 541 U.S. 267 (2004).....	8
<i>Williams v. Greene</i> , 36 N.C. App. 80, 243 S.E.2d 156 (1978).....	55
<i>Winborne v. Easley</i> , 136 N.C. App. 191, 523 S.E.2d 149 (1999).....	20

STATUTES & CONSTITUTIONAL PROVISIONS

N.C. Const. art. I	14, 16, 18–19, 21
N.C. Const. art. II.....	5
N.C. Gen. Stat. § 1-267.1	1, 13
N.C. Gen. Stat. § 8c-1	29
N.C. Gen. Stat. § 120-2.4.....	58–59
N.C. Gen. Stat. § 163-1	59

OTHER AUTHORITIES

J. MICHAEL BITZER, REDISTRICTING & GERRYMANDERING IN NORTH CAROLINA (2021).....	6
Christopher Cooper et al., <i>NC General Assembly County Clusterings from the 2020 Census</i> (Aug. 17, 2021)	9
JOHN V. ORTH & PAUL M. NEWBY, THE NORTH CAROLINA STATE CONSTITUTION (2d ed. 2013)	21
Plaintiffs’ Opposition to Legislative Defendants’ Motion for Summary Judgment, <i>Harper v. Lewis</i> , No. 19-CVS-012667 (N.C. Super. Ct. Nov. 22, 2019)	48–49

Plaintiffs have moved for a preliminary injunction seeking to enjoin Defendants—who include officials from the State Board of Elections, as well as the General Assembly—from preparing for, administering, or conducting the March 8, 2022, primary election and any subsequent election using the redistricting plans enacted by the General Assembly on November 4, 2021, for U.S. Congress (the “Enacted Congressional Plan,” attached as Ex. A),¹ the North Carolina Senate (the “Enacted Senate Plan,” attached as Ex. B),² and the North Carolina House of Representatives (the “Enacted House Plan,” attached as Ex. C)³ (collectively, the “Enacted Plans”). Plaintiffs hereby provide this brief in support of their preliminary-injunction motion. Plaintiffs’ Verified Complaint and the affidavits of Professor Moon Duchin, Stephen Feldman, and Grace Liberman, filed November 16, 2021—as well as the supplemental affidavit of Stephen Feldman filed November 22, 2021—provide the factual basis for the preliminary injunction.

INTRODUCTION

North Carolina law authorizes special three-judge panels to “hear[] and determine[]” “the validity of any act of the General Assembly that apportions or redistricts State legislative or congressional districts.” N.C. Gen. Stat. § 1-267.1(a). In 2019, a three-judge panel did just that and held that partisan gerrymandering violates North Carolina’s Free Elections Clause, as well as its Equal Protection, Free Speech, and Free Assembly Clauses. *Common Cause v. Lewis*, No. 18-CVS-014001, 2019 WL 4569584, at *3, 112, 117–18, 124 (N.C. Super. Ct. Sept. 3, 2019).

¹ S.B. 740, S.L. 2021-174, 2021-2022 Sess. (N.C. enacted Nov. 4, 2021). All exhibits referenced in this brief refer to exhibits filed as part of the Affidavit of Stephen Feldman, which was filed in conjunction with Plaintiffs’ Verified Complaint on November 16, 2021.

² S.B. 739, S.L. 2021-173, 2021-2022 Sess. (N.C. enacted Nov. 4, 2021).

³ H.B. 976, S.L. 2021-175, 2021-2022 Sess. (N.C. enacted Nov. 4, 2021).

In a 357-page opinion, the panel found that the General Assembly had gerrymandered districts across the state “to systematically prevent [one party] from obtaining a majority.” *Id.* at *116; see Order on Injunctive Relief, *Harper v. Lewis*, No. 19-CVS-012667, 2019 N.C. Super. LEXIS 122, at *7–18 (N.C. Super. Ct. Oct. 28, 2019) (three-judge panel). Such gerrymandering, the Court held, violates the core constitutional and democratic principle that “the will of the people—the majority—legally expressed, must govern.” *Common Cause*, 2019 WL 4569584, at *109 (quoting *State ex rel. Quinn v. Lattimore*, 120 N.C. 426, 428, 26 S.E. 638, 638 (1897)). That conclusion, the panel emphasized, “reflected the unanimous and best efforts of the ... judges—each hailing from different geographic regions and each with differing ideological and political outlooks—to apply core constitutional principles to [a] complex and divisive topic.” *Id.* at *1. And that conclusion accorded, too, with the unanimous views of the U.S. Supreme Court, which has spoken with one voice in affirming that partisan gerrymandering violates fundamental democratic principles and that state constitutions can remedy those violations (even as the Court has divided over whether the *federal* Constitution provides such a remedy). The panel thus enjoined the General Assembly’s congressional, Senate, and House maps. *Id.* at *135; *Harper*, 2019 N.C. Super. LEXIS 122, at *22–25.

Here, Plaintiffs seek a preliminary injunction based on the same principles applied in *Common Cause* and *Harper*. As shown by the affidavit of Professor Moon Duchin, a renowned mathematician and districting expert, the plans the General Assembly enacted in 2021 are the same type of partisan gerrymanders invalidated in *Common Cause* and *Harper*. The 2021 plans guarantee that the incumbent party will retain majorities in Congress, the state Senate, and the state House, even if voters reject that party by significant margins. Elections will not “fairly ascertain[]”

the “free will of the People”; rather, “the carefully crafted will of the map drawer ... [will] predominate[.]” *Common Cause*, 2019 WL 4569584, at *3.

The Enacted Plans, moreover, effect this democracy-destroying result via classic gerrymandering tactics. They “pack[] supermajorities of [Democratic] voters into a relatively few districts, in numbers far greater than needed for their preferred candidates to prevail.” *Id.* at *110. Then, the maps “crack[] the rest across many more districts, spreading them so thin that their candidates will not be able to win.” *Id.* Hundreds of thousands of individual Democratic voters are systematically disempowered: “Whether the person is packed or cracked, his vote carries less weight.” *Id.* For example, the Enacted Congressional Plan trisects Wake, Mecklenburg, and Guilford Counties—and only those counties—to pack and crack voters in Democratic strongholds.

The General Assembly tried to avoid accountability for its patent gerrymanders via a paper prohibition on relying on “[p]artisan considerations and election results data.” Ex. N at 2. But as it turned out, this meant only that the ***public map-drawing terminals*** did not contain election data. The General Assembly did not try to limit members from drawing gerrymandered maps elsewhere and then redrawing them on public terminals. To the contrary, they admitted that members could do so. Any claim that the General Assembly locked in Republican majorities across all three maps, without meaning to do so, does not withstand scrutiny. *Cf. Gaffney v. Cummings*, 412 U.S. 735, 753 (1973) (“[I]t is most unlikely that the political impact of ... a [grossly gerrymandered] plan would remain undiscovered by the time it was proposed or adopted, in which event the results would be both known and, if not changed, intended.”).

While the methods of gerrymandering have grown more sophisticated over the past decade, so, too, have the tools for identifying and redressing them. The plaintiffs bringing this suit are a coalition including the North Carolina League of Conservation Voters, Inc., civil rights leaders,

and individual voters, as well as professors of mathematics, statistics, and computer science. Over the past decade, advances in these areas have yielded a new field known as “computational redistricting,” which applies principles of mathematics, high-performance computing, and spatial demography to the redistricting process. Mathematicians and scientists working in this field have created tools that allow scientists both to *identify* maps that unconstitutionally burden the right to vote and to *remedy* those violations—by using algorithmic techniques that fix the constitutional flaws while adhering to traditional, neutral redistricting principles and state law.

These tools confirm that the Enacted Plans will yield severely gerrymandered results. And these tools confirm that this gerrymandering did not happen by accident, or as an artifact of North Carolina’s political geography. By leveraging the tools of computational redistricting, Plaintiffs show that the General Assembly could have drawn maps that avoid the partisan gerrymandering that marks the Enacted Plans, while *improving* on compliance with the laws and policies governing redistricting in North Carolina. Plaintiffs have presented such maps in their Verified Complaint—as the Optimized Congressional Map, Optimized Senate Map, and Optimized House Map (together, the “Optimized Maps”). The reason that the General Assembly did not draw this type of map, Plaintiffs submit, is that it intended the gerrymandered results the Enacted Plans yield.

Plaintiffs now seek, as in *Harper*, an injunction against using the Enacted Plans in the 2022 primary election, as well as (if necessary) a delay in the candidate-filing window and the primary schedule to allow the Court to institute maps that fully remedy the constitutional violations. *See Harper*, 2019 N.C. Super. LEXIS 122, at *24–25 (similar preliminary injunction). The candidate-filing window opens on December 6, 2021 for North Carolina’s March 8, 2022 primaries—and unless this Court acts, millions of North Carolinians will find their right to vote nullified. While North Carolina law presumptively allows the General Assembly two weeks to attempt to fully

remedy unlawful maps, if it fails to timely do so, the Court should order Defendants to conduct the 2022 primary election for Congress, state Senate, and state House under the Optimized Maps.

BACKGROUND

A. The Law Governing Redistricting in North Carolina

After every federal decennial census, the General Assembly must draw new legislative districts. N.C. Const. art. II, §§ 3, 5. The North Carolina State Constitution imposes several limits on that authority, including that (1) each Senator and Representative “shall represent, as nearly as may be, an equal number of inhabitants”; (2) each district “shall at all times consist of contiguous territory”; (3) “[n]o county shall be divided in the formation of a senate district ... [or] a representative district” (the “Whole County Provisions”); and (4) “[w]hen established, the senate [and representative] districts and the apportionment of [legislators] shall remain unaltered until the return of another decennial census.” *Id.*

Redistricting also must comply with other requirements of state law, including North Carolina’s Free Elections Clause, Equal Protection Clause, Free Speech Clause, and Free Assembly Clause. *Common Cause*, 2019 WL 4569584, at *108–24; *Harper*, 2019 N.C. Super. LEXIS 122, at *7–14. Federal law—including the one-person, one-vote requirement and the Voting Rights Act of 1965, as amended (the “VRA”)—imposes additional requirements.

In a line of cases beginning with *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002) (*Stephenson I*), the Supreme Court set forth a mandatory, nine-step framework that explains how to apply certain aspects of North Carolina redistricting law governing state legislative maps—in particular, the Whole County Provisions—consistent with federal law. *See id.*; *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (*Stephenson II*); *Dickson v. Rucho*, 367 N.C. 542, 766 S.E.2d 238 (2014) (*Dickson I*); *Dickson v. Rucho*, 368 N.C. 481, 781 S.E.2d 404 (2015) (*Dickson II*). The *Stephenson/Dickson* framework provides that “[f]irst, ‘legislative districts

required by the VRA shall be formed’ before non-VRA districts.” *Dickson II*, 368 N.C. at 530, 781 S.E.2d at 438. Next, “[i]n forming new legislative districts, any deviation from the ideal population for a legislative district shall be at or within plus or minus five percent” to ensure “compliance with federal ‘one-person, one-vote’ requirements.” *Id.*

Steps three through nine provide detailed instructions about how to implement the Whole County Provisions consistent with other federal and state law requirements. When one county can form exactly one non-VRA district consistent with equal-population requirements, or when one county can be divided into multiple non-VRA districts, all of which comply with equal-population requirements, the framework (in steps three and four) requires forming compact districts that do not traverse these whole counties. *Id.* Where that is *not* possible, the framework (in steps five and six) requires the formation of “clusters” of contiguous counties that, when combined, can be divided into compact districts that all comply with equal-population requirements. *Id.* at 530–31, 781 S.E.2d at 438–39. Within these clusters, the framework requires the General Assembly to minimize unnecessary “traversals” of county lines. *Id.* Steps four, five, seven, and nine of the framework require that the districts be compact. *Id.*

B. *Common Cause and Harper*

Too often, however, these neutral principles have not governed redistricting by the North Carolina General Assembly, which instead has gerrymandered based on party, race, or both. *See generally* J. MICHAEL BITZER, REDISTRICTING AND GERRYMANDERING IN NORTH CAROLINA (2021). On that score, neither party’s hands are clean—though recently, control of the General Assembly has rested with the Republican Party. In the 2011 redistricting cycle, for example, the controlling party expressly instructed its mapmaker to “ensure Republican majorities,” based on claims that the majority was “‘perfectly free’ to engage in constitutional partisan gerrymandering.” *Common Cause*, 2019 WL 4569584, at *4. In 2016, federal courts invalidated the 2011

congressional and legislative plans as unconstitutional racial gerrymanders.⁴ But when the General Assembly redrew those maps, it again created “[e]xtreme partisan gerrymander[s].” *Id.* at *125, *135; *see Harper*, 2019 N.C. Super. LEXIS 122, at *16–18. Indeed, one legislative leader “acknowledge[d] freely that” the congressional map “would be a political gerrymander.” *Harper*, 2019 N.C. Super. LEXIS 122, at *17.

In 2019, the three-judge panel carefully considered the argument that incumbent officeholders are “perfectly free” to gerrymander. *Common Cause*, 2019 WL 4569584, at *4. In an exhaustive opinion, the panel unanimously rejected that claim. The Court held that, under “extreme partisan gerrymander[s],” elections do not “fairly ascertain[]” the “free will of the People”; rather, “the carefully crafted will of the map drawer ... predominates.” *Id.* at *3. And that result, the panel held, “violate[s] multiple fundamental rights guaranteed by the North Carolina Constitution.” *Harper*, 2019 N.C. Super. LEXIS 122, at *18. Those include the fundamental rights protected by North Carolina’s Free Elections Clause—which has no counterpart in federal law—as well as the Equal Protection, Free Speech, and Free Assembly Clauses. *Infra* Part I.A (detailing how partisan gerrymandering violates these clauses).

That conclusion, the panel emphasized, “reflected the unanimous and best efforts of the ... judges—each hailing from different geographic regions and each with differing ideological and political outlooks—to apply core constitutional principles to [a] complex and divisive topic.” *Common Cause*, 2019 WL 4569584, at *1. That conclusion, too, accorded with the guidance of the Supreme Court of the United States. *Id.* at *2. In 2004, all nine Justices agreed that “an

⁴ *Harris v. McCrory*, 159 F. Supp. 3d 600 (M.D.N.C. 2016) (congressional plan), *aff’d sub nom. Cooper v. Harris*, 137 S. Ct. 1455 (2017); *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016) (legislative plans), *summarily aff’d*, 137 S. Ct. 2211 (2017).

excessive injection of politics” in redistricting is “unlawful.”⁵ And in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), all nine Justices again agreed that partisan gerrymanders are “incompatible with democratic principles.” *Id.* at 2506; *id.* at 2512 (Kagan, J., dissenting). While *Rucho* held that partisan gerrymandering claims are nonjusticiable in federal court, Chief Justice Roberts emphasized that the Court’s opinion did not “condemn complaints” about “excessive partisan gerrymandering” to “echo into a void.” *Id.* at 2506 (majority op.). Instead, state courts can find prohibitions on such gerrymandering in “state constitutions.” *Id.* at 2507; *see Common Cause*, 2019 WL 4569584, at *2. In *Common Cause* and *Harper*, the three-judge panel held that North Carolina’s constitution proscribes partisan gerrymanders. The panel thus enjoined the use of the gerrymandered maps for Congress, the state Senate, and the state House.

C. The 2021 Redistricting Process

When the time came to redistrict following the 2020 census, the General Assembly changed its means but not its ends. Instead of drawing North Carolina’s districts to fairly reflect North Carolinians’ preferences, the General Assembly structured its processes to conceal its aims and, if possible, to shield its gerrymandered maps from scrutiny.

1. The General Assembly did so, first, in the criteria and methods adopted by the committees overseeing the redistricting process. The Senate Committee on Redistricting and Elections (chaired by Defendants Hise, Daniel, and Newton) and the House Committee on Redistricting (chaired by Defendant Hall) issued proposed redistricting criteria on August 9, 2021, and, three days later, adopted them with minimal amendments. Verified Compl. ¶¶ 61–63. The adopted criteria stated that “[p]artisan considerations and election results data ***shall not*** be used in

⁵ *Vieth v. Jubelirer*, 541 U.S. 267, 292–93 (2004) (plurality op. of Scalia, J.); *see id.* at 316 (Kennedy, J., concurring) (noting the plurality’s agreement that severe partisan gerrymandering is unlawful).

the drawing of districts in the 2021 Congressional, House, and Senate plans.” *Id.* ¶ 69. As it turned out, however, this statement meant only that the Committees’ computer terminals did not contain electoral data. *Id.* ¶ 70. Members were free to draw maps outside the hearing rooms, using whatever data they liked, and then redraw them on the public terminals. *Id.* Indeed, Defendant Hall admitted that he had no intention of blocking such maneuvers. *Id.*; Liberman Aff. ¶ 2.

When the map-drawing process was getting started on October 5, Committee members were instructed to begin by selecting one of the county clusters that had been developed by an academic research group at Duke University to implement the *Stephenson/Dickson* framework. Verified Compl. ¶ 73. The Duke researchers explained that the clusters—16 options for the Senate plan and 8 for the House plan—were “largely algorithmically determined through an optimization procedure outlined by the NC Supreme Court in *Stephenson v. Bartlett*” using the 2020 census data. *Id.*; Ex. O at 1. The Duke researchers cautioned, however, that the “one part of *Stephenson* ... which this analysis does not reflect is compliance with the Voting Rights Act.”⁶ Ex. O at 1. Even so, the Committees did not account for this limitation. Verified Compl. ¶ 74. Indeed, the Committees adopted redistricting criteria providing that “[d]ata identifying the race of individuals or voters shall not be used,” even though it is impossible to assess VRA compliance without considering how racial data intersect with election results. *Id.* ¶¶ 65–69; Ex. N at 2.

2. Meanwhile, the General Assembly established a calendar that would limit scrutiny of its maps. Redistricting depends on data generated by the U.S. Census Bureau. In 2021, however, the COVID-19 pandemic delayed the release of census data for about five months, to August 2021. Verified Compl. ¶ 60; Ex. J at 1. Shortly after the Census Bureau announced that the delay would

⁶ Christopher Cooper et al., *NC General Assembly County Clusterings from the 2020 Census* (Aug. 17, 2021) (Ex. O to the Verified Complaint’s Feldman Affidavit).

extend deep into 2021, the Executive Director of the North Carolina State Board of Elections advised the General Assembly to delay the 2022 congressional and legislative primary by eight weeks—from the original date, March 8, to May 3—with second primaries on July 12. Verified Compl. ¶ 184; Ex. L at 14.

The General Assembly duly allowed *municipalities* to delay their municipal primaries. Verified Compl. ¶ 185. But it refused to reschedule primaries for congressional and legislative offices. *Id.*

As a result, North Carolina is an outlier. Forty-eight of the 50 States have 2022 primaries scheduled in May or later. *Id.* ¶ 183. Nineteen States have scheduled 2022 primaries for August or later. *Id.* Only North Carolina and Texas are contemplating a primary as early as March—and Texas’s primary may be postponed based on pending litigation. *Id.*

North Carolina’s artificially compressed redistricting schedule became a tool to limit public and expert scrutiny. During September, the Committees held 13 public hearings—but because no maps had been proposed, those hearings did not provide the public or experts a meaningful opportunity to provide input. *Id.* ¶ 72. On October 6, Committee members began drawing proposed maps in the hearing rooms. *Id.* ¶ 75. On October 21, with little advance notice, the Committees announced that public hearings would be held on October 25 and 26. *Id.* ¶ 76. The Committees did not specify which, if any, of the many maps that had been posted online were final contenders, leaving the public and experts unable to identify the maps that were the Committee leaders’ focus. *Id.* On October 28, the Committees announced legislative hearings on November 1 and 2 to consider proposed congressional and legislative plans. *Id.* After cursory hearings, the Committees passed proposed plans for Congress, the state Senate, and the state House. On

November 4, the General Assembly adopted the Enacted Plans into law, each with no or few amendments and all on party-line votes. *Id.* ¶¶ 78–81.

Now, the General Assembly’s artificially compressed schedule threatens to interfere with the *judiciary’s* ability to scrutinize the gerrymandered plans. Any candidate seeking nomination for a congressional or legislative office currently must file a notice of candidacy between December 6 and 17, 2021. *Id.* ¶ 181. Soon thereafter, the State Board of Elections must begin mailing ballots, with the primary not far behind. Unless this Court acts, the 2022 primary election will proceed under the Enacted Plans *even though* they constitute egregious gerrymanders.

D. This Suit and Plaintiffs’ Motion for a Preliminary Injunction

On November 16, just 12 days after the General Assembly enacted its maps, Plaintiffs filed this suit. The Verified Complaint alleges that the Enacted Plans are unconstitutional partisan gerrymanders that violate North Carolina’s Free Elections Clause (Count I), Equal Protection Clause (Count II), and Free Speech and Free Assembly Clauses (Count III)—the same violations that the three-judge panels found in 2019 in *Common Cause* and *Harper*. The Verified Complaint also alleges that the Enacted Maps unlawfully dilute the voting strength of North Carolina’s black voters in violation of North Carolina’s Free Elections Clause (Count IV) and Equal Protection Clause (Count V), as well as violate the Whole County Provisions as implemented in the *Stephenson/Dickson* framework (Count VI).

Plaintiffs include the North Carolina League of Conservation Voters, Inc. (“NCLCV”), which sues on its own behalf and on behalf of thousands of its members who are registered to vote in North Carolina and reside in every congressional, state Senate, and state House district.⁷

⁷ In particular, as relevant here, NCLCV’s President has verified that NCLCV has members who are registered Democratic voters in all 14 districts under the Enacted Congressional Plan, all 50

Plaintiffs also include civil-rights legend Mickey Michaux, himself a former member of the General Assembly, as well as Democratic and black voters who reside across the state. And Plaintiffs include noted professors of mathematics, statistics, and computer science, including Dr. Dandrielle Lewis, the Department Chair of Mathematical Sciences at High Point University; Dr. Timothy Chartier, the Joseph R. Morton Professor of Mathematics and Computer Science at Davidson College; Dr. Talia Fernós, Associate Professor of Mathematics at the University of North Carolina at Greensboro; Dr. Katherine Newhall, Associate Professor of Mathematics at the University of North Carolina at Chapel Hill; and Dr. R. Jason Parsley, Associate Professor of Mathematics at Wake Forest University.

Simultaneously, Plaintiffs moved for a preliminary injunction. The motion seeks to enjoin Defendants—who include officials from the State Board of Elections—from preparing for, administering, or conducting the March 8, 2022 primary election and any subsequent election for Congress, the state Senate, or the state House using the Enacted Plans. The motion also seeks ancillary relief detailed further below. *Infra* Part II.C.

Plaintiffs have moved for preliminary relief only on their claims (in Counts I–III) that parallel the successful claims in *Common Cause* and *Harper*. Plaintiffs have also supported their motion with evidence. In addition to their Verified Complaint, Plaintiffs have submitted an affidavit from Professor Duchin—a mathematician specializing in metric geometry and one of the Nation’s leading experts on computational redistricting—demonstrating that the Enacted Plans are extreme, unjustified partisan gerrymanders. Plaintiffs have also submitted voluminous documentary evidence. *See* Exs. A–AI; Liberman Aff. ¶¶ 2–4.

districts under the Enacted Senate Plan, and all 120 districts under the Enacted House Plan. Verified Compl. ¶ 11 & n.4.

LEGAL STANDARD

A preliminary injunction should issue if (1) the plaintiff can “show likelihood of success on the merits of his case,” (2) the plaintiff “is likely to sustain irreparable loss unless the injunction is issued,” and (3) a “balancing of the equities” supports injunctive relief. *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759 (1983).⁸

ARGUMENT

I. Plaintiffs Are Likely to Succeed on the Merits.

This motion calls for a straightforward application of the same legal principles applied in *Common Cause* and *Harper*. As these cases hold, the North Carolina State Constitution proscribes “extreme partisan gerrymanders.” *Common Cause*, 2019 WL 4569584, at *3. And as Professor Duchin’s affidavit demonstrates, the Enacted Plans constitute just such extreme partisan gerrymanders. Plaintiffs are thus likely to succeed on their claims.⁹ Below, Plaintiffs first detail

⁸ Plaintiffs primarily seek a prohibitory injunction to restrain Defendants from using the Enacted Plans in administering the 2022 primary and general elections. *See Roberts v. Madison Cnty. Realtors Ass’n, Inc.*, 344 N.C. 394, 399, 474 S.E.2d 783, 787 (1996) (explaining that a prohibitory injunction is “preventive in character” and “forbid[s] the continuance of a wrongful act or the doing of some threatened or anticipated injury”). Because that relief does not require Defendants to “perform a positive act,” Plaintiffs do not need to satisfy the standard for a mandatory injunction. *Auto Dealer Res., Inc. v. Occidental Life Ins. Co. of N.C.*, 15 N.C. App. 634, 639, 190 S.E.2d 729, 732 (1972); *see Harper*, 2019 N.C. Super. LEXIS 122, at *11 (granting injunction based on the standard for prohibitory injunctions). And that remains true even though Plaintiffs *also* ask the Court to order that the 2022 elections proceed under lawful maps that remedy the Enacted Plans’ constitutional violations as thoroughly as Plaintiffs’ Optimized Maps. That latter request merely invokes this Court’s independent duty to ensure, after it holds the Enacted Maps unlawful, that elections occur under lawful maps. Regardless, Plaintiffs also satisfy the standard for a mandatory injunction: The harms to Plaintiffs from the Enacted Plans are “immediate, pressing, irreparable, and clearly established.” *Auto Dealer Res.*, 15 N.C. App. at 639, 190 S.E.2d at 732.

⁹ North Carolina courts have not determined whether decisions of three-judge courts bind three-judge panels of the same Court. Given that the General Assembly in N.C. Gen. Stat. § 1-267.1(a) *specifically* empowered three-judge panels to resolve constitutional objections to redistricting plans, Plaintiffs maintain that *Common Cause* and *Harper* are properly considered binding precedent. At minimum, however, those decisions—and the careful reasoning that supports them—underscore that, at the preliminary-injunction stage, Plaintiffs are likely to succeed in

the several ways in which, as *Common Cause* and *Harper* recognize, partisan gerrymandering violates the North Carolina State Constitution. Then, Plaintiffs show that each of the Enacted Plans constitutes an unlawful partisan gerrymander.

A. The North Carolina State Constitution Prohibits Partisan Gerrymandering.

1. The Free Elections Clause Forbids Partisan Gerrymandering.

North Carolina’s prohibition on partisan gerrymandering flows, first, from its Free Elections Clause—as *Common Cause* correctly held, based on a scholarly analysis of that clause’s text and history. 2019 WL 4569584, at *2. The Free Elections Clause declares that “[a]ll elections shall be free.” N.C. Const. art. I, § 10. It derives from the 1689 English Bill of Rights and is “one of the clauses that makes the North Carolina Constitution more detailed and specific than the federal Constitution.” *Common Cause*, 2019 WL 4569584, at *109 (citing *Corum v. Univ. of N.C.*, 330 N.C. 761, 783, 413 S.E.2d 276, 290 (1992)).

As *Common Cause* explained, the Free Elections Clause protects the “fundamental role of the will of the people in our democratic government.” *Id.* In particular, it protects the ability of a *majority* of the people to translate votes into governing power: Because “this is a government of the people, ... the will of the people—the majority—legally expressed, must govern.” *Id.* (quoting *Quinn*, 120 N.C. at 428, 26 S.E. at 638). Hence, “the object of all elections” must be “to ascertain, fairly and truthfully, the will of the people—the qualified voters.” *Id.* (quoting *Hill v. Skinner*, 169 N.C. 405, 415, 86 S.E. 351, 356 (1915)); see *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 220 (1875) (“Our government is founded on the will of the people,” which is “expressed by the ballot[.]”).

showing that partisan gerrymanders violate the North Carolina State Constitution. *Cf.* Order, *Haw River Assembly v. Rao*, No. 15-CVS-127 (Super. Ct., Wake Cnty. May 7, 2015) (finding a likelihood of success “[b]ased on the decision of [a] three-judge panel” in a different case).

As *Common Cause* held, partisan gerrymandering thwarts this command. That is because elections under gerrymandered maps do not “ascertain, fairly and truthfully, the will of the people.” *Hill*, 169 N.C. at 415, 86 S.E. at 356. Rather, the government has “interfere[d]” with that will. *Common Cause*, 2019 WL 4569584, at *111 (quoting JOHN V. ORTH & PAUL M. NEWBY, THE NORTH CAROLINA STATE CONSTITUTION 55–57 (2d ed. 2013)). It “is the will of the map drawers,” not the voters, “that prevails.” *Id.* at *110. And that result violates the “core principle of republican government”—“namely, that the voters should choose their representatives, not the other way around.” *Id.* (quoting *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 824 (2015)). Indeed, partisan gerrymandering “represent[s] an abuse of power that, at its core, evinces a fundamental distrust of voters, serving the self-interest of the political parties at the expense of the public good.” *Id.* (quotation marks omitted).

Gerrymandering works, and has always worked, by manipulating district lines for partisan gain. In 17th-century England, the King undertook “to manipulate parliamentary elections, including by changing the electorate in different areas to achieve ‘electoral advantage.’” *Id.* at *111 (quoting J.R. JONES, THE REVOLUTION OF 1688 IN ENGLAND 148 (1972)). Those abuses “led to a revolution” and, thereafter, a provision in the 1689 English Bill of Rights specifying that “election of members of parliament ought to be free.” *Id.* (quoting Bill of Rights 1689, 1 W. & M. c. 2 (Eng.)). That clause aimed, directly, at the King’s gerrymandering. *Id.* At the Founding, several states adopted free-elections clauses modeled on the 1689 English Bill of Rights, and the framers of the North Carolina Declaration of Rights drew inspiration from these states, including Pennsylvania. *Id.* These states have understood their free-elections clauses to prohibit partisan gerrymandering by protecting each citizen’s right to “an equally effective power to select the

representative of his or her choice” and “bar[ring] the dilution of the people’s power to do so” via gerrymandering. *League of Women Voters v. Commonwealth*, 178 A.3d 737, 814 (Pa. 2018).¹⁰

As the three-judge panel in *Common Cause* recognized, in the intervening centuries, North Carolina has only strengthened that protection. Its original 1776 constitution closely paralleled the English Bill of Rights and provided that “elections *ought* to be free.” *Common Cause*, 2019 WL 4569584, at *111 (emphasis added). In 1971, North Carolina amended the clause to specify that “[a]ll elections *shall* be free.” *Id.* (emphasis added by the panel). This amendment “ma[d]e [it] clear” that the Free Elections Clause is a “command[] and not mere admonition[.]” *N.C. State Bar v. DuMont*, 304 N.C. 627, 635, 639, 286 S.E. 2d 89, 94, 97 (1982). The *Common Cause* panel properly enforced this command and held that partisan gerrymandering is “contrary to the fundamental right[s] of North Carolina citizens” under the Free Elections Clause. 2019 WL 4569584, at *110.

The *Common Cause* panel also held that partisan gerrymanders violate a right that is a close corollary to the Free Elections Clause. The Declaration of Rights provides that “[f]or redress of grievances and for amending and strengthening the laws, elections shall be often held.” N.C. Const. art. I, § 9. This clause, together with the Free Elections Clause, “mandates that elections in North Carolina must be ‘free from interference or intimidation’ by the government, so that all North Carolinians are freely able, through the electoral process, to pursue a ‘redress of grievances and for amending and strengthening the laws.’” *Common Cause*, 2019 WL 4569584, at *111 (quoting ORTH & NEWBY, *supra*, at 56). But when gerrymanders entrench one party in power, and

¹⁰ As early as the 1860s, the Pennsylvania Supreme Court explained “that elections are made equal by ‘laws which shall arrange all the qualified electors into suitable districts, and make their votes equally potent in the election; so that some shall not have more votes than others, and that all shall have an equal share in filling the offices of the Commonwealth.” *League of Women Voters*, 178 A.3d at 814 (quoting *Patterson v. Barlow*, 60 Pa. 54, 75 (1869)).

prevent the other party from winning elections, voters cannot “meaningfully seek to redress their grievances or amend the laws consistent with their policy preferences”—because these voters are unable to “obtain a majority” of seats, even with a majority of votes. *Id.* at *112.

2. The Equal Protection Clause Prohibits Partisan Gerrymandering.

Common Cause also held, correctly, that the North Carolina State Constitution’s Equal Protection Clause proscribes partisan gerrymandering. As the Supreme Court has explained, “[t]he right to vote is one of the most cherished rights in our system of government.” *Blankenship v. Bartlett*, 363 N.C. 518, 522, 681 S.E.2d 759, 762 (2009). And in North Carolina, the Equal Protection Clause protects “[t]he right to vote *on equal terms* in representative elections,” *id.* (emphasis added), and the right to “substantially equal voting power,” *Stephenson I*, 355 N.C. at 379, 562 S.E.2d at 394.

Indeed, this is yet another way in which North Carolina’s Equal Protection Clause is “broader” than its federal counterpart. *Common Cause*, 2019 WL 4569584, at *113. For instance, in *Stephenson I*, the North Carolina Supreme Court invalidated the simultaneous use of single-member and multimember districts in a redistricting plan. Such a scheme does not violate the federal Equal Protection Clause—but it burdens the “fundamental right under the State Constitution” to “substantially equal voting power and substantially equal legislative representation.” *Stephenson I*, 355 N.C. at 387, 562 S.E.2d at 396. Similarly, in *Blankenship*, the North Carolina Supreme Court held that North Carolina’s Equal Protection Clause “mandates one-person, one-vote in judicial elections, even though the United States Constitution does not.” *Common Cause*, 2019 WL 4569584, at *114 (citing *Blankenship*, 363 N.C. at 522–24, 681 S.E.2d at 762–64).

Common Cause thus held that, under North Carolina’s broad Equal Protection Clause, partisan gerrymandering denies individuals “the equal protection of the laws,” N.C. Const. art. I, § 19, as to one of their most cherished rights. It does so, first, “by seeking to diminish the electoral power of supporters of a disfavored party.” *Common Cause*, 2019 WL 4569584, at *113. It thereby “treats individuals who support candidates of one political party less favorably than individuals who support candidates of another” and deprives them of “equal” voting power. *Id.* As *Common Cause* held, there “is nothing ‘equal’ about the ‘voting power’ of Democratic voters when they have a vastly less realistic chance of winning a majority.” *Id.* at *116.

Common Cause also recognized that, as a corollary, partisan gerrymanders unlawfully deprive voters from the disfavored party of “substantially equal legislative representation.” *Id.* That is because “[p]artisan gerrymandering insulates legislators from popular will and renders them unresponsive to portions of their constituencies.” *Id.* In particular, “[w]hen a district is created solely to effectuate the interests of one group, the elected official from that district is ‘more likely to believe that their primary obligation is to represent only the members of that group, rather than their constituency as a whole.’” *Id.* (quoting *Shaw v. Reno*, 509 U.S. 630, 648 (1993)). Or as the Supreme Court put it in *Stephenson I*, the “political reality” is that “legislators are much more inclined to listen to and support a constituent than an outsider.” 355 N.C. at 380, 562 S.E.2d at 395. And when partisan gerrymandering fixes the results of general elections, legislators may view only those of ***their party*** as genuine constituents. *Common Cause*, 2019 WL 4569584, at *117 (explaining that “legislators are far more likely to represent the interests and policy preferences of voters of the same party”); *see also* N.C. Const. art. I, § 9.

3. The Free Speech and Free Assembly Clauses Ban Partisan Gerrymandering.

Finally, *Common Cause* held that partisan gerrymanders violate North Carolina’s Free Speech and Free Assembly Clauses. 2019 WL 4569584, at *118–24; *see Harper*, 2019 N.C. Super. LEXIS 122, at *11–14. They do so by targeting votes for the disfavored party—which constitute core political speech—and making them less effective, and by preventing members of the disfavored party from effectively assembling and instructing their representatives.

i. As *Common Cause* explained, partisan gerrymandering violates the Free Speech Clause by targeting speech based on viewpoint. The Free Speech Clause provides that “[f]reedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained.” N.C. Const. art. I, § 14. And “[v]oting ... constitutes a form of protected speech.” *Common Cause*, 2019 WL 4569584, at *119. Indeed, there “is no right more basic in our democracy than the right to participate in electing our political leaders—including ... the right to vote.” *Id.* (quoting *McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185, 191 (2014) (plurality op. of Roberts, C.J.)) (internal quotation marks omitted). True, a vote carries a legal effect. But as Justice Alito explained, the “act of voting is not drained of its expressive content when the vote has a legal effect.” *Nev. Comm’n on Ethics v. Carrigan*, 564 U.S. 117, 134 (2011) (Alito, J., concurring).

Applying decades of North Carolina law, *Common Cause* recognized that a law violates the Free Speech Clause when “it renders disfavored speech *less effective*, even if it does not ban such speech outright”—because the “government may not restrict a citizen’s ‘ability to *effectively* exercise’ their free speech rights.” *Common Cause*, 2019 WL 4569584, at *121 (emphasis added) (quoting *Heritage Vill. Church & Missionary Fellowship, Inc. v. State*, 40 N.C. App. 429, 451, 253 S.E.2d 473, 486 (1979), *aff’d*, 299 N.C. 399, 263 S.E.2d 726 (1980)); *see McCullen v. Coakley*,

573 U.S. 464, 489–90 (2014) (state law violated First Amendment rights of pro-life protestors, even though “petitioners [could] still be ‘seen and heard,’” because the law “effectively stifled [their] message”); *Davis v. Fed. Election Comm’n*, 554 U.S. 724, 736 (2008) (restrictions on self-financed candidates violated the First Amendment by “diminish[ing] the effectiveness” of speech); *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 747 (2011) (scheme violated the First Amendment by rendering “speech ... less effective”).

As *Common Cause* held, partisan gerrymandering does just that by making some votes—votes for the disfavored party—less effective based on viewpoint. It “is ‘axiomatic’ that the government may not infringe on protected activity based on ... viewpoint.” 2019 WL 4569584, at *120 (quoting *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995)). Indeed, “political speech” has “such a high status” that, for such speech, free speech protections have their “fullest and most urgent application.” *Winborne v. Easley*, 136 N.C. App. 191, 198, 523 S.E.2d 149, 154 (1999). Hence, “[v]iewpoint discrimination is *most* insidious where the targeted speech is political.” *Common Cause*, 2019 WL 4569584, at *120. As the U.S. Supreme Court has explained, in “the context of political speech, ... [b]oth history and logic” demonstrate the perils of permitting the government to “identif[y] certain preferred speakers” while burdening “disfavored speakers.” *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 340 (2010). The government may not burden the “speech of some [speakers] in order to enhance the relative voice of others.” *McCutcheon*, 572 U.S. at 207. That is what partisan gerrymandering does.¹¹

¹¹ Indeed, that conclusion is especially clear because the “North Carolina Supreme Court has held that the North Carolina Constitution’s Free Speech Clause provides broader rights than does federal law.” *Common Cause*, 2019 WL 4569584, at *118. In *Corum*, for example, the Supreme Court “expressly relied on *the lack* of a federal remedy” and how this gap, if not filled by North Carolina’s Free Speech Clause, would leave the plaintiff with “no other remedy ... for alleged violations of his constitutional freedom of speech rights.” *Common Cause* 2019 WL 4569584, at *118 (quoting *Corum*, 330 N.C. at 783, 413 S.E.2d at 290).

ii. *Common Cause* also held that partisan gerrymandering violates free speech and free assembly rights by preventing voters and supporters of the disfavored party from effectively associating. The Free Assembly Clause specifies that the “people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.” N.C. Const. art. I, § 12. This guarantee encompasses a “right to freedom of association.” *Feltman v. City of Wilson*, 238 N.C. App. 246, 253, 767 S.E.2d 615, 620 (2014). Indeed, North Carolina courts have “recognized the right to associate in order to express one’s views is inseparable from the right to speak freely”—because “[a]n individual’s freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed.” *Id.* (quoting *Edwards v. City of Goldsboro*, 178 F.3d 231, 249 (4th Cir. 1999)); *accord Libertarian Party of N.C. v. State*, 365 N.C. 41, 48, 707 S.E.2d 199, 204 (2011).

In particular, *Common Cause* explained that “[j]ust as voting is a form of protected expression, banding together with likeminded citizens in a political party is a form of protected association.” 2019 WL 4569584, at *120. That is because individuals form parties to “express their political beliefs and to assist others in casting votes in alignment with those beliefs.” *Libertarian Party*, 365 N.C. at 49, 707 S.E.2d at 204. Indeed, for “elections to express the popular will, the right to assemble and consult for the common good must be guaranteed.” *Common Cause*, 2019 WL 4569584, at *120 (quoting JOHN V. ORTH, THE NORTH CAROLINA STATE CONSTITUTION 48 (1995)); *accord* ORTH & NEWBY, *supra*, at 58. By contrast, as *Common Cause* holds, partisan gerrymandering unconstitutionally burdens the right “to associate effectively”—in three ways. 2019 WL 4569584, at *122.

First, partisan gerrymanders burden the ability of voters and supporters of the disfavored party to associate with “their representatives” to “obtain redress ... on issues important to those voters.” *Id.* If partisan gerrymandering precludes these voters and supporters from “obtain[ing] ... majorities,” it thwarts the **whole point** of their protected association. *Id.*

Second, partisan gerrymandering “violate[s] ... associational rights by” weakening the ability of political associations to “carry out [their] core functions and purposes.” *Id.* (quoting *Gill v. Whitford*, 138 S. Ct. 1916, 1939 (2018) (Kagan, J., concurring)). Political parties (like the Democratic Party, in which several Plaintiffs are active, Verified Compl. ¶¶ 14, 26) and politically oriented associations (like NCLCV) carry out their missions by “fundraising, registering voters, attracting volunteers, generating support from independents, and recruiting candidates to run for office.” *Id.* (quoting *Gill*, 138 S. Ct. at 1939 (Kagan, J., concurring)). But when partisan gerrymandering renders elections a charade, such that the disfavored party has no “meaningful opportunity to gain majority control,” *id.*, parties and politically active associations will struggle to persuade citizens that they should invest scarce time and hard-earned money.

Third, partisan gerrymanders violate associational rights by making less effective the resources that parties and associations **do** invest. When parties and associations invest time or money in campaigns, they do so to associate with candidates and others. But partisan gerrymandering makes those investments far less effective and forces parties and associations “to drain and divert resources ... merely to avoid being relegated to a superminority.” *Id.* By “diminish[ing] the effectiveness” of these expenditures, political gerrymanders burden associational rights. *Davis*, 554 U.S. at 736; *see Bennett*, 564 U.S. at 736.

B. Plaintiffs Are Likely to Succeed in Showing That the Enacted Plans Constitute Unlawful Partisan Gerrymanders.

The Enacted Plans are just the type of “extreme partisan gerrymander” that *Common Cause* and *Harper* condemned. *Common Cause*, 2019 WL 4569584, at *3. Plaintiffs first explain the key feature that, under those cases, marks a map as such a partisan gerrymander—namely, that it prevents the disfavored party from receiving a majority of seats, even when that party’s candidates earn a majority of votes statewide, and even when that party would obtain a majority of seats under fair maps. Then, Plaintiffs show that each of the Enacted Plans has this same democracy-destroying feature, supported by Professor Duchin’s expert affidavit. In “[e]very *single* ... close statewide contest,” the Enacted Plans will award the favored Republican Party “an outright ... majority” of seats. Duchin Aff. 15 (emphasis modified). And even if Republican candidates *lose* the statewide vote by seven percentage points, they would *still* receive a majority of seats. *Id.* at 14; Verified Compl. ¶¶ 129–131. That result should not happen. And Plaintiffs’ Optimized Maps show that this result would not happen under fair maps that comply with North Carolina law.

1. As *Common Cause* and *Harper* Recognize, a Key Feature of an Unconstitutional Partisan Gerrymander Is That It Systematically Prevents One Party from Receiving a Majority of Seats Even When It Wins a Majority of Votes.

As *Common Cause* and *Harper* hold, an unconstitutional partisan gerrymander has a hallmark feature: “maps are drawn to systematically prevent [one party] from obtaining a majority” of seats. *Common Cause*, 2019 WL 4569584, at *116.¹² When plans have that feature, they violate

¹² *Accord Common Cause*, 2019 WL 4569584, at *2 (“[T]he effect of these carefully crafted partisan maps is that, in all but the most unusual election scenarios, the Republican party will control a majority of both chambers of the General Assembly.”); *id.* (“[I]n many election environments, it is the carefully crafted maps, and not the will of the voters, that dictate the election outcomes in a significant number of legislative districts and, ultimately, the majority control of the General Assembly.”); *id.* at *116 (“Democratic voters are significantly hindered from meaningfully participating in the decision-making process of government when the maps are drawn to systematically prevent Democrats from obtaining a majority”); *Harper*, 2019 N.C.

the core democratic principle that “the will of the people—the majority—legally expressed, must govern.” *Id.* at *109 (quoting *Quinn*, 120 N.C. at 428, 26 S.E. at 638).

That feature is especially destructive in an evenly balanced state like North Carolina. Over the past decade, across 52 statewide races, Republican candidates have received, on average, 50.9% of the major-party votes, and Democratic candidates have won 49.1%. *Duchin Aff.* 8. Republican candidates have won some important elections (including the 2016 and 2020 Presidential elections and the 2016 and 2020 U.S. Senate elections); Democratic candidates have won others (including the 2016 and 2020 elections for Governor and Attorney General). *Id.* In the last statewide general election, the 2020 Chief Justice race was decided by a mere 401 votes. Verified Compl. ¶¶ 82, 91(a). In such a state, fair redistricting maps will provide both parties a realistic opportunity to capture half or more of the districts if their candidates garner half or more of the statewide votes. *Id.* ¶ 157; *Duchin Aff.* 7; *see Common Cause*, 2019 WL 4569584, at *43.

Common Cause applied this principle to examine how the maps at issue performed in competitive elections. The Court analyzed, for example, “electoral environments where Democrats could win a majority of ... seats under a nonpartisan map,” and looked to past elections—like the 2018 election—where “Republican candidates won a minority ... of the two-party statewide vote” and Democrats won a majority. *Common Cause*, 2019 WL 4569584, at *22, *74. The Court found that even in those environments, where any fair map would give Democratic candidates a realistic possibility of winning a majority of seats, the maps were “designed specifically to ensure that Democrats would not win a majority.” *Id.* at *22. In 2018, for example, Republican candidates “still won 29 of 50 [Senate] seats (58%)” and “65 of 120 [House] seats

Super. LEXIS 122, at *17–18 (holding that North Carolina’s congressional plan likely unlawfully advantaged Republicans where it gave a lopsided “[p]artisan [a]dvantage” of “10 Republicans [to] 3 Democrats”).

(54%),” despite losing the statewide vote. *Id.* at *74. “Democrats would have needed to win over 55% of the statewide vote to win a majority.” *Id.* Those features, *Common Cause* held, were “substantial evidence of the intent and effects of [a] partisan gerrymander.” *Id.* at *22.

Below, Plaintiffs show that each of the Enacted Plans has those same unlawful features.

2. The Enacted Congressional Plan Is an Unconstitutional Partisan Gerrymander.

The Enacted Congressional Plan is designed to prevent Democrats from winning a majority of North Carolina’s 14 congressional seats in all likely electoral scenarios. In *any* election decided within a seven-point margin, that plan effectively guarantees the Republican Party at least nine seats (64%), and typically generates at least 10 seats (71%), even if voters prefer Democratic candidates statewide. And it does so via the classic gerrymandering tactics of packing and cracking.

i. Professor Duchin undertook the same analysis that *Common Cause* held was dispositive. She examined voting data from 52 statewide partisan elections in 2012, 2014, 2016, 2018, and 2020 and analyzed how the Enacted Congressional Plan would translate those votes into seats. Duchin Aff. 8, 13–14.

First, Professor Duchin examined elections where voters were almost evenly divided. In the 2016 gubernatorial election, for example, the Democratic candidate won by 0.2 percentage points statewide. Professor Duchin analyzed the results that those same votes would have yielded, had they been cast for congressional candidates under the Enacted Congressional Plan. (In that example, Dr. Duchin found that Republican candidates would have won 10 of 14 congressional seats.) Duchin Aff. 14. Then, to test whether those skewed results reflected an inevitable feature of North Carolina’s political geography, or instead showed partisan gerrymandering, Professor

Duchin analyzed the results of those *same elections* under an alternative map—Plaintiffs’ Optimized Congressional Map (Ex. D).

The results are clear and unambiguous: In close statewide elections, the Enacted Congressional Plan *always* guarantees Republicans a supermajority of seats. The Optimized Congressional Map *never* yields such a result, for either party. *See Common Cause*, 2019 WL 4569584, at *112 (emphasizing that the General Assembly’s maps were “gerrymandered to be most resilient in electoral environments where Democrats could win majorities in either chamber under nonpartisan plans”). Table 1 illustrates that point based on five recent close elections:

Table 1: Outcomes in 5 Close Elections in Enacted & Optimized Congressional Maps

Election (margin)	Enacted Congressional Plan	Optimized Congressional Map
2016 Governor (0.2-pt. D win)	10 R, 4 D	7 R, 7 D
2016 Atty General (0.5-pt. D win)	10 R, 4 D	7 R, 7 D
2016 Super. Pub. Instr. (1.2-pt. R win)	10 R, 4 D	8 R, 6 D
2020 President (1.4 pt.-R win)	10 R, 4 D	6 R, 8 D
2020 Chief Justice (0.0-pt. R win)	10 R, 4 D	6 R, 8 D

Note: Data derived from Duchin Aff., Table 6.

Second, Professor Duchin analyzed elections where Democratic candidates prevailed by significant margins. This analysis shows that under *any* plausible scenario, the Enacted Plan awards Republicans at least 9 of North Carolina’s 14 seats. Duchin Aff. 14. If Democratic candidates prevail statewide by anything less than 7 percentage points, Republican candidates *still* carry 9 or 10 congressional districts. *Id.* And again, Professor Duchin’s analysis confirms that this result cannot be blamed on political geography: As Table 2 shows, a fair and neutral map can translate Democratic statewide victories into Democratic majorities.

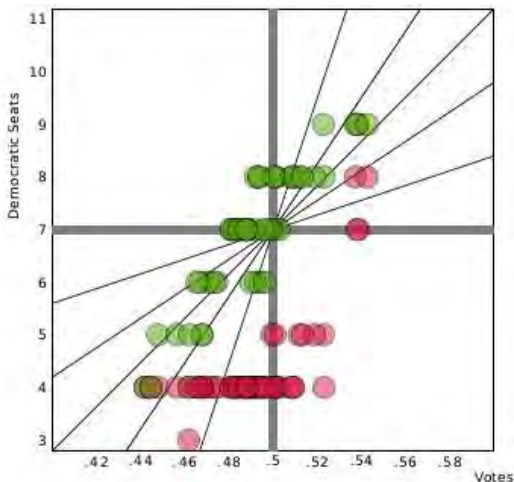
Table 2: Outcomes in 3 Democratic Elections in Enacted & Optimized Congressional Maps

Election (margin)	Enacted Congressional Plan	Optimized Congressional Map
2020 Governor (4.6-pt. D win)	10 R, 4 D	6 R, 8 D
2020 Sec’y of State (2.3-pt. D win)	9 R, 5 D	6 R, 8 D
2020 Auditor (1.8-pt D win)	10 R, 4 D	6 R, 8 D

Note: Data derived from Duchin Aff., Table 6.

Third, Professor Duchin examined *bias*. Figure 1 compares Democratic *vote* share (on the x-axis) with Democratic *seat* share (on the y-axis) across the same 52 elections. A map that responds to voters’ preferences would roughly track one of the black diagonal lines that cross at the “(50, 50)” point, where a 50% vote share generates a 50% seat share.¹³ Along those lines, as either party wins more votes, it wins more seats. And if either party wins a majority of votes, it wins a majority of seats. But as Figure 1 shows, the Enacted Congressional Plan (in red dots) does not come near the diagonal lines or pass through the (50, 50) point.

Figure 1: Vote Shares and Seat Shares in Enacted & Optimized Congressional Maps



Note: Data derived from 52 recent general-election contests. Red dots denote results under the Enacted Congressional Plan. Green dots denote results under the Optimized Congressional Map in the same 52 elections.

¹³ Different black diagonal lines reflect differing degrees of responsiveness of seat share to shifts in vote share. Steeper lines indicate plans that would reward election winners with a larger “bonus” of seats. Because all the black diagonal lines pass through the (50, 50) point, in a politically even state they all treat Republicans and Democrats equally. By contrast, the Enacted Plans all heavily favor Republicans.

Figure 1 shows that, under the Enacted Congressional Plan, more Democratic votes usually *do not* mean more Democratic seats, reflected in the flat red line near the bottom of the figure. Indeed, the bulk of the red dots are stuck on that line, where Democrats carry only 4 of 14 districts. And in each of the 12 statewide contests where the Democratic candidate won by less than seven percentage points, the winner carried only 4 or 5 of the 14 districts (these are the red dots in the lower-right quadrant, where more than half the votes generated less than half the seats). So a clear majority of Democratic votes does not translate into a majority of seats. By contrast, the Optimized Congressional Map (in green) treats both parties fairly, with seat shares following the diagonal lines, passing right through the (50, 50) point, and almost invariably (with only 4 exceptions out of 52 elections) falling in the upper-right and lower-left quadrants, where a majority of votes (for either party) generates a majority of seats (or a tie).

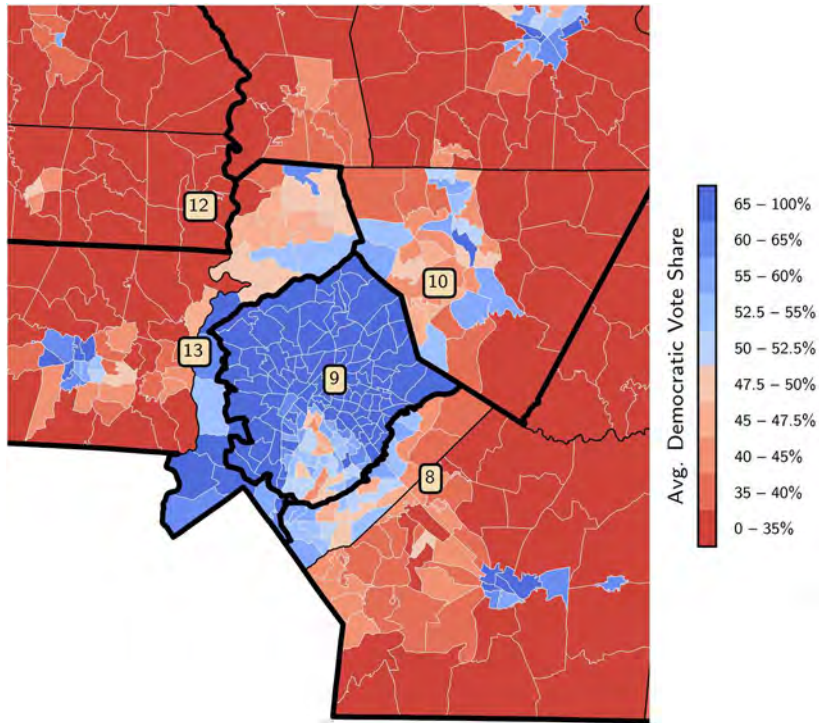
Aggregate data tell the same story. Across all 52 statewide elections, Democratic candidates received 49.1% of major-party votes on average. *Duchin Aff. 8*. But under the Enacted Congressional Plan, Democratic candidates would have received an average of only 31.2% of seats—in contrast to 49.3% under the Optimized Congressional Map. *Id.*

ii. The Enacted Congressional Plan achieves these skewed results via the classic tactics of gerrymandering: It “packs” Democratic voters into some districts (such as Districts 6 and 9), while “cracking” Democratic voters elsewhere. Especially striking, the plan trisects the Democratic strongholds of Mecklenburg, Wake, and Guilford Counties—and *only those counties*—to crack Democratic voters and minimize Democratic voting strength.

First, the Enacted Congressional Plan fractures Mecklenburg County, home to one of North Carolina’s two largest concentration of Democratic voters, across three districts. Verified Compl. ¶ 93. As Figure 2 shows, the plan carefully packs Democrats in and around Charlotte into

one heavily Democratic district (District 9). It then splits Mecklenburg County’s remaining Democratic voters between two districts (Districts 8 and 13) with large Republican majorities.

Figure 2: Packing & Cracking in Mecklenburg County.¹⁴



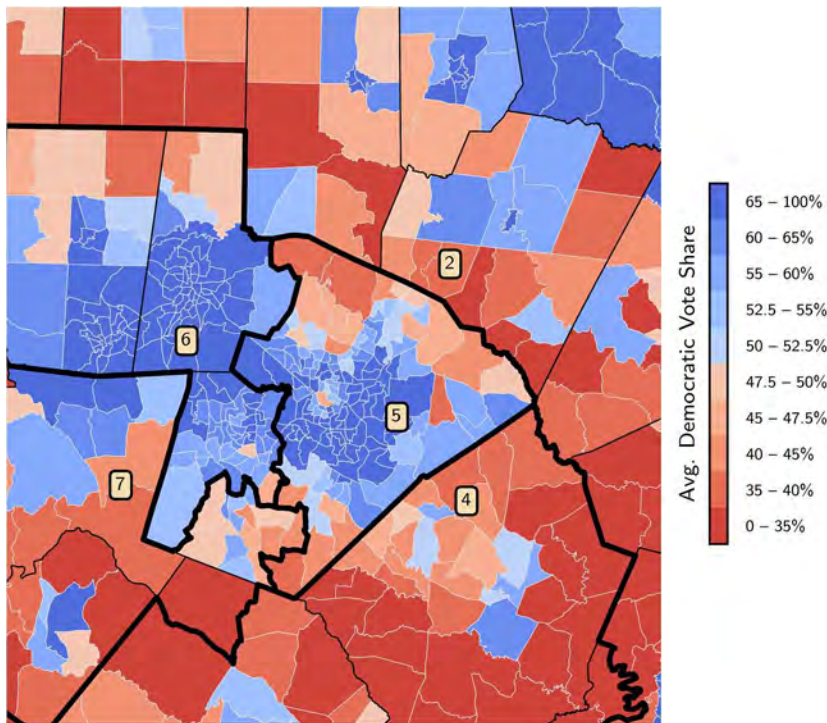
Note: Figure 2 depicts Congressional District 9 and parts of Districts 8 and 13. Colors indicate average Democratic vote share by voting district across all statewide non-judicial races in the 2020 general election.

¹⁴ The color maps in this brief are based solely on newly enacted 2021 district lines (described in the block assignment and shape files available at <https://ncleg.gov/BillLookup/2021/S740>; <https://ncleg.gov/BillLookup/2021/S739>; and <https://ncleg.gov/BillLookup/2021/H976>); geographic and demographic data from the U.S. Census Bureau’s 2020 Census (Public Law 94-171) “Redistricting Data Summary Files” and “TIGER/Line Shapefiles” (available at <https://www.census.gov/data/datasets/2020/dec/2020-census-redistricting-summary-file-dataset.html>; and <https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-line-file.html>) and 2020 electoral data from the North Carolina State Board of Elections (available at <https://www.ncsbe.gov/results-data/election-results/historical-election-results-data> (“Precinct Sorted Results”); and <https://www.ncsbe.gov/results-data/voter-history-data> (“Historical Voter History Stats”))—all of which are judicially noticeable under North Carolina law. N.C. Gen. Stat. § 8c-1, Rule 201; see *Anderson Creek Partners, L.P. v. County of Harnett*, 275 N.C. App. 423, 429, 854 S.E.2d 1, 6 (2020) (documents subject to judicial notice include, *inter alia*, “important public documents”); see generally *Hinkle v. Hartsell*, 131 N.C. App. 833, 836, 509 S.E.2d 455, 457–58 (1998).

Second, the Enacted Congressional Plan fragments Wake County, home to the other one of North Carolina’s two largest concentration of Democratic voters, across three districts. Verified Compl. ¶ 94.

- District 5 encompasses Raleigh’s most heavily Democratic voting districts.
- District 6 packs Democrats in Cary and Durham together, resulting in a second heavily Democratic district with an expected Democratic vote share of more than 70%.
- The plan then creates a third district (District 7) that is heavily Republican and absorbs the region’s remaining Democrats without endangering District 7’s Republican majority.

Figure 3: Packing & Cracking in Wake and Durham Counties.

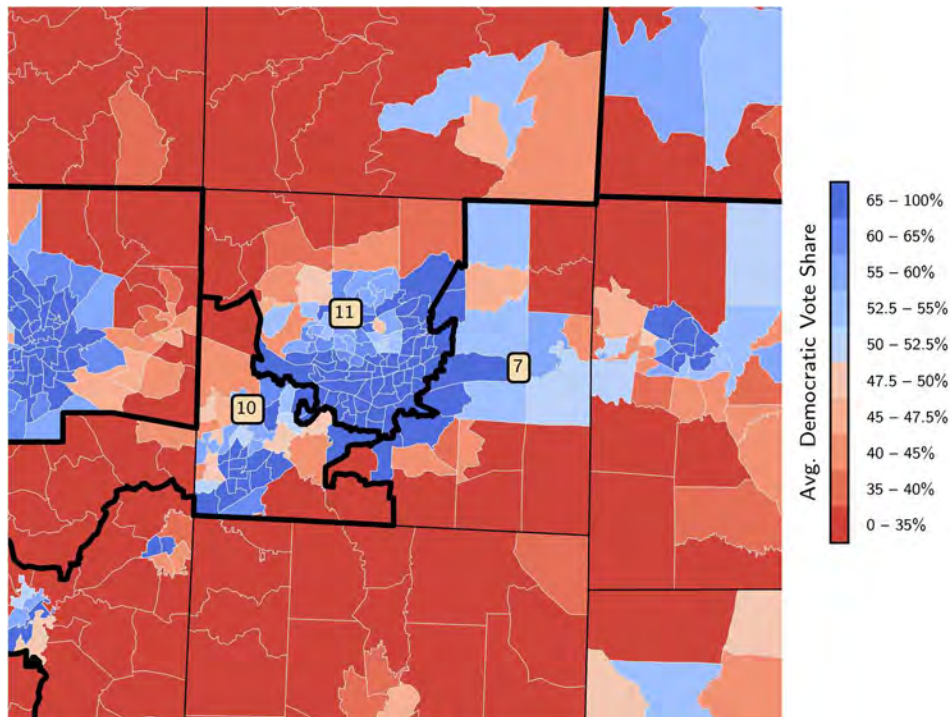


Note: Figure 3 depicts Congressional District 5 and parts of Districts 6 and 7. Colors indicate average Democratic vote share by voting district across all statewide non-judicial races in the 2020 general election.

Third, the Enacted Congressional Plan cracks Democratic voters in Guilford County, home to North Carolina’s third largest Democratic population. Verified Compl. ¶ 95. Under the prior districting plan, Guilford County sat within one Democratic-leaning district. It is now split into three separate congressional districts—all guaranteed to elect Republicans:

- Democratic voting districts in eastern Guilford County are cracked into Congressional District 7, which is (as noted) heavily Republican.
- Democrats around downtown Greensboro are cracked into a heavily Republican District 11, which was gerrymandered to avoid Democratic Forsyth County and stretch far west through Republican-majority counties all the way to the Tennessee border.
- Democratic voters from High Point are cracked into heavily Republican District 10. District 10 cuts west to avoid Democratic voting districts in Lexington and turns 90 degrees to the south to pick up Republican voters as far south as the Charlotte suburbs.

Figure 4: Cracking in Guilford County.



Note: Figure 4 depicts parts of Congressional Districts 7, 10, and 11. Colors indicate average Democratic vote share by voting district across all statewide non-judicial races in the 2020 general election.

By trisecting Guilford County, the General Assembly converted the previously Democratic District 6 into three districts that will *never* elect a candidate nominated by the party that Guilford County’s voters prefer.

Tellingly, when the Enacted Congressional Plan cracked and packed Democratic voters, it subordinated traditional, neutral redistricting principles, including compactness and respect for political subdivisions. *Harris v. McCrory*, 159 F. Supp. 3d 600, 614 (M.D.N.C. 2016). In

particular, the Enacted Congressional Plan’s districts are significantly less compact than the Optimized Congressional Map’s. One measure of compactness, which the *Common Cause* Court relied upon and which the General Assembly’s 2021 redistricting principles endorse, is the “Polsby-Popper score.”¹⁵ *Common Cause*, 2019 WL 4569584, at *19; Ex. N. The Enacted Congressional Plan’s score is only 0.30 (where 1.0 is perfect). *Duchin Aff.* 5. The Optimized Congressional Map scores 0.38. *Id.* A second measure, the “Reock” score¹⁶—which, again, the General Assembly endorsed, *Feldman Aff.* Ex. N at 1—tells the same story: The Enacted Congressional Plan’s average score is 0.38, compared with 0.44 in the Optimized Congressional Map. *Duchin Aff.* 5.

Traditional redistricting principles in North Carolina also favor municipal integrity. *North Carolina v. Covington*, 138 S. Ct. 2548, 2551 (2018). But in pursuit of its partisan gerrymander, the Enacted Congressional Plan splits more municipalities than necessary, more often than necessary. The Enacted Congressional Plan splits 42 municipalities into 90 parts. *Duchin Aff.* 6. The Optimized Congressional Map splits only 27 municipalities into only 58 parts. *Id.*

3. The Enacted Senate Plan Is an Unconstitutional Partisan Gerrymander.

The Enacted Senate Plan is also gerrymandered to entrench Republican political power and to prevent Democrats from winning a Senate majority for the next decade. Through cracking and packing, the Enacted Senate Plan guarantees Republicans a majority of Senate seats, and quite possibly a supermajority, even when voters clearly prefer Democratic candidates statewide.

¹⁵ The Polsby-Popper score measures a district’s jaggedness by comparing its area to the square of the length of its perimeter. *Duchin Aff.* 5. A circle would score a perfect 1.0. *Id.*

¹⁶ The Reock score measures a district’s elongation by comparing its area to the area of its circumcircle—defined as the smallest circle the district can fit in. *Duchin Aff.* 5. Again, a circular district would score a perfect 1.0. *Id.*

i. Professor Duchin’s analysis of the Enacted Senate Plan shows that it, like the General Assembly’s congressional plan, will yield extremely skewed results. **First**, Table 3 shows that in close elections, the Enacted Senate Plan again guarantees Republicans a substantial majority of seats, even when they lose the vote statewide. Duchin Aff. 10, 14. Indeed, with a voting pattern like the 2020 gubernatorial election, the plan could produce a veto-proof Republican supermajority even when **Democrats** win statewide, just like the Senate plan invalidated in *Common Cause*. *Id.*; see *Common Cause*, 2019 WL 4569584, at *30. And again, that is unlike the Optimized Senate Map, under which close elections yield competitive outcomes.

Table 3: Outcomes in 5 Close Elections in Enacted & Optimized Senate Maps

Election (margin)	Enacted Senate Plan	Optimized Senate Map
2016 Governor (0.2-pt. D win)	30 R, 20 D	23 R, 27 D
2016 Att’y General (0.5-pt. D win)	30 R, 20 D	27 R, 23 D
2016 Super. Pub. Instr. (1.2-pt. R win)	28 R, 22 D	27 R, 23 D
2020 President (1.4-pt. R win)	30 R, 20 D	25 R, 25 D
2020 Chief Justice (0.0-pt. R win)	28 R, 22 D	23 R, 27 D

Note: Data derived from Duchin Aff., Table 6.

Second, the Enacted Senate Plan again locks in Republican majorities even when Democratic candidates win statewide by significant margins. Under any plausible scenario, the Enacted Senate Plan awards Republicans at least 26 of North Carolina’s 50 Senate seats, and typically at least 28. Duchin Aff. 14. Democrats cannot break this majority until they secure a statewide margin of more than 7 percentage points, which would be highly unusual in North Carolina. *Id.* And again, Professor Duchin’s analysis confirms that this result cannot be attributed to political geography: As Table 4 shows, a fair and neutral map translates Democratic statewide victories into Senate majorities.

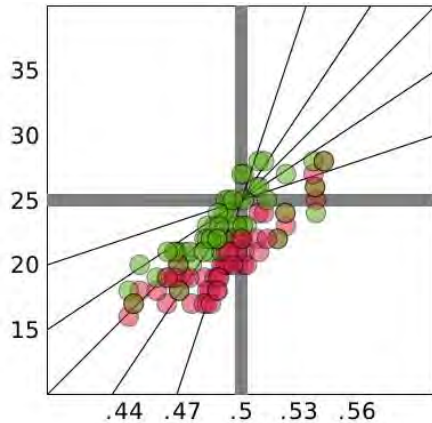
Table 4: Outcomes in 3 Democratic Elections in Enacted & Optimized Senate Maps

Election (margin)	Enacted Senate Plan	Optimized Senate Map
2020 Governor (4.6-pt. D win)	27 R, 23 D	23 R, 27 D
2020 Sec’y of State (2.3-pt. D win)	26 R, 24 D	22 R, 28 D
2020 Auditor (1.8-pt D win)	26 R, 24 D	22 R, 28 D

Note: Data derived from Duchin Aff., Table 6.

Third, Professor Duchin’s analysis confirms that the Enacted Senate Plan, like the Enacted Congressional Plan, is severely biased. For every vote share across 52 recent general elections, the Enacted Senate Plan manufactures a pro-Republican bias. And in each of the 12 statewide contests where the Democratic candidate won the vote by less than seven percentage points, the winning candidate carried only 20 to 24 of the 50 districts in the Enacted Senate Plan (these are the red dots in Figure 5’s lower-right quadrant). So a clear majority of Democratic votes does not translate into a majority of seats. By contrast, the Optimized Senate Map (shown in green dots) treats both parties fairly, with seat shares following the diagonal lines, passing right through the (50, 50) point, and almost invariably (with only 6 exceptions out of 52 elections) falling in the upper-right and lower-left quadrants, where a majority of votes (for either party) generates a majority of seats (or a tie).

Figure 5: Vote Shares and Seat Shares in Enacted & Optimized Senate Maps



Note: Data derived from 52 recent general-election contests. Red dots denote results under the Enacted Senate Plan. Green dots denote results under the Optimized Senate Map in the same 52 elections.

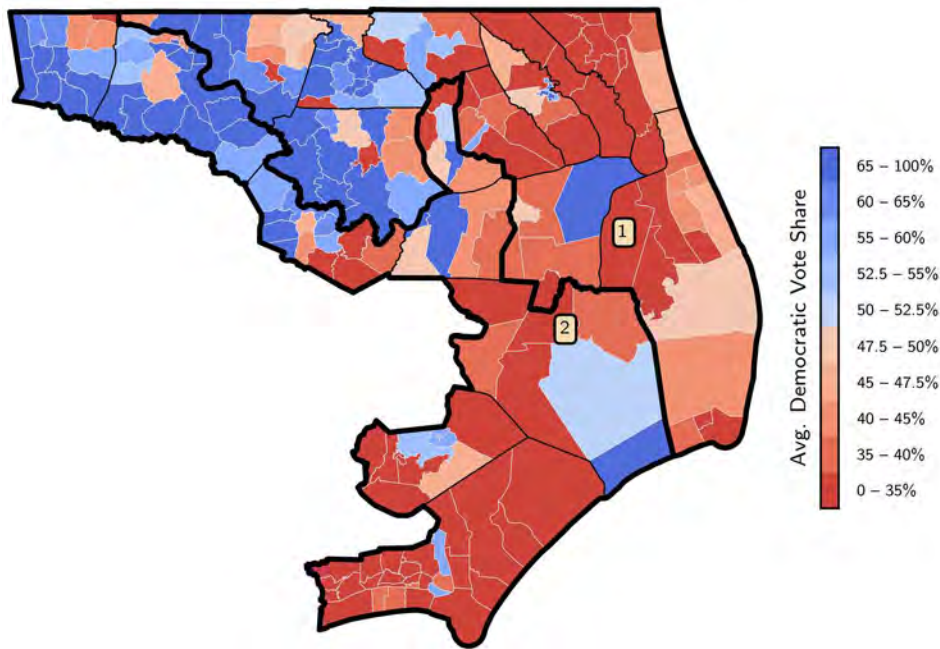
Aggregate data again tell the same story. Across all 52 statewide general elections Professor Duchin analyzed, Democratic candidates received 49.1% of major-party votes on average. *Duchin Aff. 8*. But under the Enacted Senate Plan, Democratic candidates receive only 40.7% of seats on average, compared with 45.9% under the Optimized Senate Map—better tracking the statewide vote share.¹⁷ *Id.*

ii. Like the Enacted Congressional Plan, the Enacted Senate Plan achieves these skewed results by cracking and packing Democratic voters. Figure 6 depicts northeastern North Carolina, which is home to large Democratic-voting populations that form substantial majorities in Bertie, Halifax, Hertford, Northampton, and Warren Counties. These counties could have been placed in the same district, creating one district where Democrats have an opportunity to elect candidates to

¹⁷ The difference between these data and those for the congressional maps is likely due to the Whole County Provisions. On the one hand, those provisions—which apply to Senate and House, but not congressional, districts—imposed a ceiling on how thoroughly the General Assembly could gerrymander the Senate and House districts. On the other hand, those provisions also constrained the Optimized Senate Map from reaching perfectly unbiased, responsive results. For present purposes, however, the critical point is that the Optimized Senate Plan shows that nothing in North Carolina’s political geography compelled the *magnitude* of skew that exists in the Enacted Senate Plan. The same is true of the Enacted House Plan. *See infra* pp. 41–42.

the Senate, and another district that Republicans will win. There was every reason to do so: It would have reduced the number of county traversals and improved compactness, consistent with the *Stephenson/Dickson* framework. See *Stephenson I*, 355 N.C. at 384, 562 S.E.2d at 397; Verified Compl. ¶ 104(b). Instead, the Enacted Senate Plan splits these majority-Democratic counties between two districts—Senate Districts 1 and 2—to crack Democratic voters. The result is two Senate seats that will reliably vote Republican, at the cost of violating the *Stephenson/Dickson* framework. *Id.* ¶ 104(c).

Figure 6: Cracking in Northeastern North Carolina.

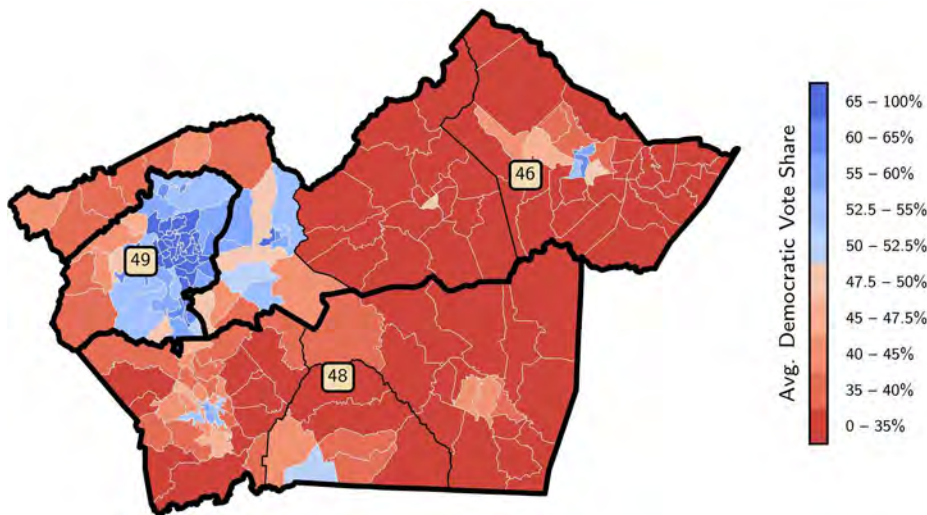


Note: Figure 6 depicts Senate Districts 1 and 2. Colors indicate average Democratic vote share by voting district across all statewide non-judicial races in the 2020 general election.

Similarly, the Enacted Senate Plan cracks (and packs) the Democratic vote in southwestern North Carolina. Buncombe, Henderson, and Polk Counties all have Democratic populations. In a map drawn to reduce county traversals, these counties would be grouped together into a two-district cluster and would host one Democratic district and one competitive swing district. Verified Compl. ¶ 105(b). Instead, the Enacted Senate Plan “cracks” southwestern North Carolina’s

Democrats by clustering Buncombe County with heavily Republican McDowell and Burke Counties. The clustering decision, which increases traversals, splits Buncombe County’s Democrats from Democratic voters in Henderson and Polk Counties. This—along with the General Assembly’s decision to group all of Asheville’s most heavily Democratic voting districts in one Senate district—converts what would otherwise be a swing district into a safely Republican District 46. *Id.* ¶ 105(b)–(d).

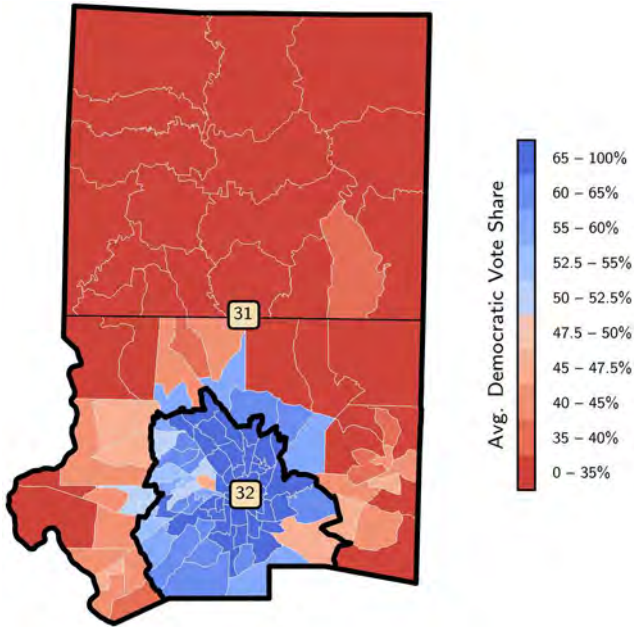
Figure 7: Cracking and Packing in Buncombe, Henderson, and Polk Counties.



Note: Figure 7 depicts Senate Districts 46, 48, and 49. Colors indicate average Democratic vote share by voting district across all statewide non-judicial races in the 2020 general election.

The Enacted Senate Plan “packs” Democrats elsewhere as well. In Forsyth County, it packs Democratic voters in and around Winston-Salem into District 32, where they generate significant Democratic vote margins. *Id.* ¶ 110. By “wasting” these votes, the plan ensures that Senate District 31—instead of being competitive—will always elect the Republican candidate.

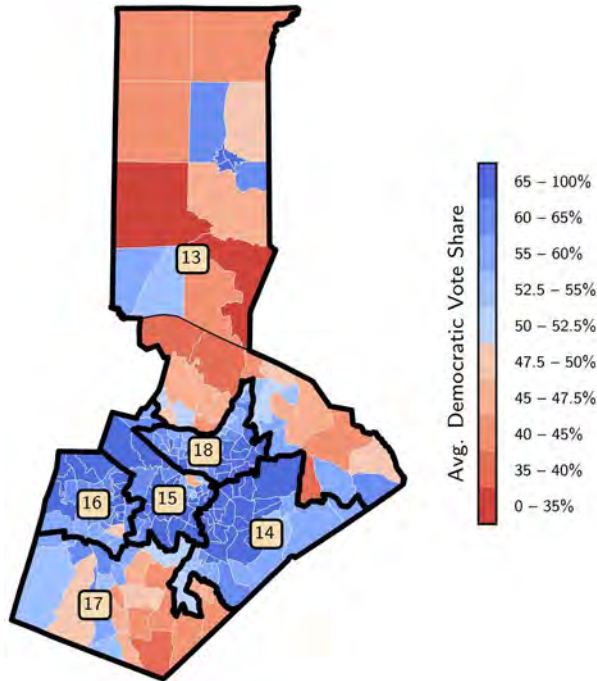
Figure 8: Packing in Forsyth County.



Note: Figure 8 depicts Senate Districts 31 and 32. Colors indicate average Democratic vote share by voting district across all statewide non-judicial races in the 2020 general election.

The General Assembly did the same in Wake County. The Enacted Senate Plan packs Democrats into four districts—Districts 14, 15, 16, and 18—where they generate huge Democratic majorities. Verified Compl. ¶ 108. This assures that Republicans win District 13, which is drawn to avoid Democratic voting districts in Raleigh’s northern suburbs.

Figure 9: Packing in Wake County.



Note: Figure 9 depicts Senate Districts 13, 14, 15, 16, 17, and 18. Colors indicate average Democratic vote share by voting district across all statewide non-judicial races in the 2020 general election.

The General Assembly was relentless in its pursuit of Republican advantage. *Every time* the General Assembly could have drawn an extra Republican seat, or deprived Democrats of an opportunity, it did so. Municipal boundaries and communities of interest were respected when doing so would help Republicans—and when not, not. The General Assembly made such choices across the state, from Henderson County in the southwest to Hertford County in the northeast, as detailed further in Plaintiffs’ Verified Complaint. Verified Compl. ¶¶ 103–111. And it did so to effect the aggregate result that the Enacted Senate Plan yields: Republicans will retain majority control in the Senate, no matter what voters prefer.

Illustrating the point is how, again, the General Assembly subordinated traditional districting principles. The *Stephenson/Dickson* framework emphasizes minimizing county traversals. See *Dickson II*, 368 N.C. at 490, 781 S.E.2d at 413 (“[T]he resulting interior county

lines created by any such groupings may be crossed or traversed in the creation of districts within said multi-county grouping but only to the extent necessary to comply with the at or within plus or minus five percent ‘one-person, one-vote’ standard.”). The Enacted Senate Plan, however, traverses county lines 97 times—eight more traversals than in the Optimized Senate Map. Duchin Aff. 6. North Carolina law also requires pursuing compact districts—as set forth in each of steps four, five, seven, and nine of the *Stephenson/Dickson* framework. *Dickson II*, 368 N.C. at 490–91, 781 S.E.2d at 413. The Enacted Senate Plan’s average Polsby-Popper score, however, is only 0.34—lower than the Optimized Senate Map’s score of 0.37. Duchin Aff. 5. And the Enacted Senate Plan’s average Reock score is 0.40, compared with 0.42 in the Optimized Senate Map. Duchin Aff. 5. Finally, North Carolina law favors keeping municipalities intact. *See Stephenson I*, 355 N.C. at 384, 562 S.E.2d at 397. Yet the Enacted Senate Plan unnecessarily splits 65 municipalities into 152 parts—in contrast to the Optimized Senate Map, which splits only 51 municipalities into only 125 parts. Duchin Aff. 6; Verified Compl. ¶ 171.

4. The Enacted House Plan Is an Unconstitutional Partisan Gerrymander.

The Enacted House Plan is also engineered to entrench Republican political power. In any realistic scenario, even when Democrats win a sizable majority of votes, the Enacted House Plan will consistently generate Republican majorities and sometimes supermajorities in the House. Duchin Aff. 14.

i. The Enacted House Plan locks in a Republican advantage similar to that of the other two plans. **First**, in close elections, the Enacted House Plan creates a “firewall” that guarantees Republicans a safe majority of at least 16 seats (a 68-to-52 majority). *Common Cause*, 2019 WL 4569584, at *32; Duchin Aff. 10, 14. Table 5 shows how the Enacted House Plan translates competitive elections into large Republican majorities (unlike the Optimized House Map):

Table 5: Outcomes in 5 Close Elections in Enacted & Optimized House Maps

Election (margin)	Enacted House Plan	Optimized House Map
2016 Governor (0.2-pt. D win)	70 R, 50 D	62 R, 58 D
2016 Atty General (0.5-pt. D win)	70 R, 50 D	63 R, 57 D
2016 Super. Pub. Instr. (1.2-pt. R win)	71 R, 49 D	63 R, 57 D
2020 President (1.4-pt. R win)	70 R, 50 D	60 R, 60 D
2020 Chief Justice (0.0-pt. R win)	68 R, 52 D	60 R, 60 D

Note: Data derived from Duchin Aff., Table 6.

Second, even when Democratic candidates win the statewide vote by significant margins, the Enacted House Plan guarantees a Republican majority. As Professor Duchin’s analysis shows, under *any* plausible scenario, the map awards Republicans at least 62 House seats, and typically at least 66. Duchin Aff. 14. Democrats again cannot break this majority until they secure a statewide margin of more than 7 percentage points—unlike under the Optimized House Map, which shows that the General Assembly could have drawn a fair map consistent with state law.

Table 6: Outcomes in 3 Democratic Elections in Enacted & Optimized House Maps

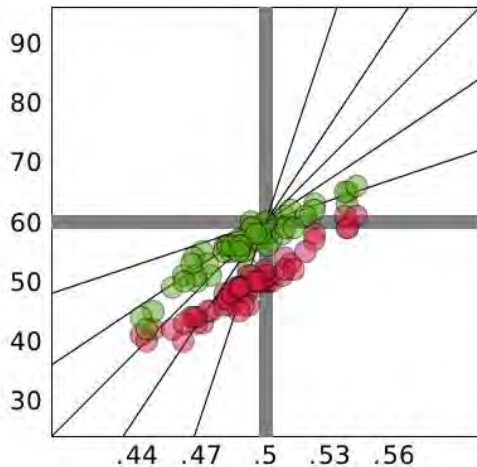
Election (margin)	Enacted House Plan	Optimized House Map
2020 Governor (4.6-pt. D win)	62 R, 58 D	57 R, 63 D
2020 Sec’y of State (2.3-pt. D win)	67 R, 53 D	58 R, 62 D
2020 Auditor (1.8-pt D win)	66 R, 54 D	59 R, 61 D

Note: Data derived from Duchin Aff., Table 6.

Third, the Enacted House Plan again does not respond to voters’ preferences. For every vote share across 52 recent general elections, the Enacted House Plan manufactures a pro-Republican bias. And in each of the 12 statewide contests where the Democratic candidate won the vote by less than seven percentage points, the winning candidate carried only 50 to 58 of the 120 districts in the Enacted House Plan (these are the red dots in Figure 9’s lower-right quadrant). So a clear majority of Democratic votes does not translate into a majority of seats. By contrast, the Optimized House Map (shown in green dots) treats both parties fairly, with seat shares following the diagonal lines, passing right through the (50, 50) point, and almost invariably (with

only 6 exceptions out of 52 elections) falling in the upper-right and lower-left quadrants, where a majority of votes (for either party) generates a majority of seats (or a tie).

Figure 10: Vote Shares and Seat Shares in Enacted & Optimized House Maps

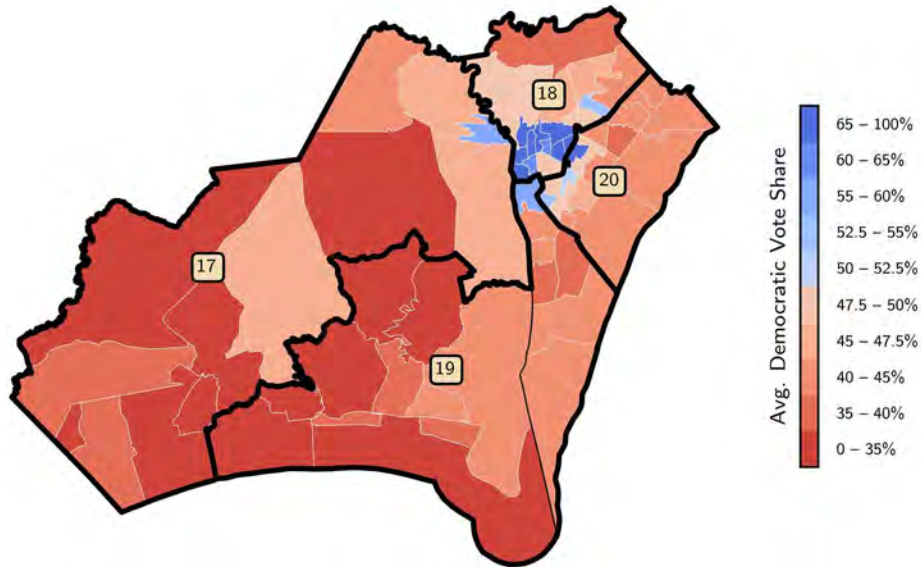


Note: Data derived from 52 recent general-election contests. Red dots denote results under the Enacted House Plan. Green dots denote results under the Optimized House Map in the same 52 elections.

Across all 52 elections that Professor Duchin analyzed, Democratic candidates received 49.1% of the major-party votes on average. Duchin Aff. 8. Under the Enacted House Plan, Democratic candidates would have received only 40.8% of House seats. *Id.* Under the Optimized House Map, by contrast, Democratic candidates would have won 46.8% of seats—better tracking the statewide vote share.

ii. The Enacted House Plan’s skewed results again result from the General Assembly’s cracking and packing. As one example, the four-district county cluster containing New Hanover and Brunswick Counties contains a sizable proportion of Democratic voters. Verified Compl. ¶ 118. The General Assembly, however, drew district boundaries to create three safe Republican districts: House Districts 17, 19, and 20. It did so by slicing Wilmington so that its most Democratic precincts are all packed into District 18. The cluster’s remaining Democratic precincts are safely divided up among three other districts, where they will not impact election results.

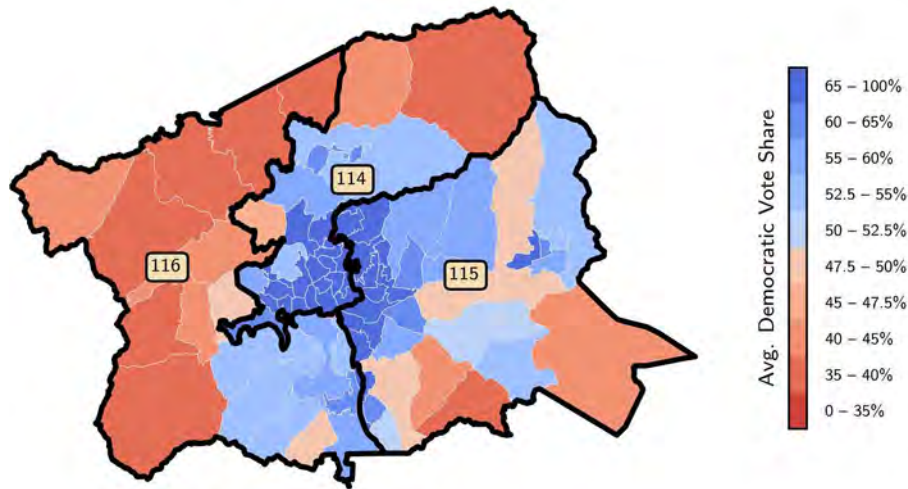
Figure 11: Packing in New Hanover County.



Note: Figure 11 depicts House Districts 17, 18, 19, and 20. Colors indicate average Democratic vote share by voting district across all statewide non-judicial races in the 2020 general election.

In Buncombe County, the House Plan packs Democrats into Districts 114 and 115 to carve out a safe Republican seat in District 116. District 116, which incorporates part of Asheville but carefully avoids its most Democratic precincts, is the least compact district in the map. Verified Compl. ¶ 119. More compact districts would not entrench Republican partisan advantage. *Id.*

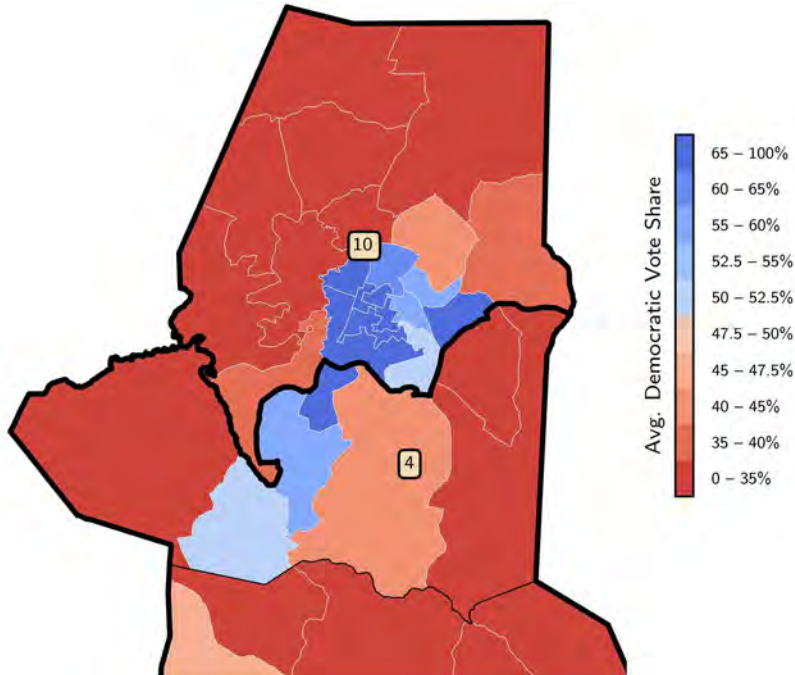
Figure 12: Packing in Buncombe County.



Note: Figure 12 depicts House Districts 114, 115, and 116. Colors indicate average Democratic vote share by voting district across all statewide non-judicial races in the 2020 general election.

Elsewhere, the Enacted House Plan cracks Democratic voters—for example, in the two-district cluster of Duplin and Wayne Counties. Wayne County contains many Democratic voters in Goldsboro and the communities of Spring Home and Brogden just to the south. Verified Compl. ¶ 121. But instead of keeping them together, the Enacted House Plan cracks Wayne County’s Democrats between House Districts 4 and 10 to create two reliably Republican districts. *Id.*

Figure 13: Cracking in Wayne County.



Note: Figure 13 depicts House Districts 4 and 10. Colors indicate average Democratic vote share by voting district across all statewide non-judicial races in the 2020 general election.

Again, the General Assembly pursued this cracking and packing statewide, from Onslow to Alamance and beyond, as detailed further in Plaintiffs’ Verified Complaint. Verified Compl.

¶¶ 117–123. And again, to do so, General Assembly subordinated traditional districting principles:

- The Enacted House Plan traverses county lines 69 times—three more than the 66 traversals in the Optimized House Map. Duchin Aff. 6.
- The Enacted House Plan’s average Polsby-Popper score is only 0.35. *Id.* at 5. The Optimized House Map scores 0.41. *Id.*
- The average Reock score in the Enacted House Plan is 0.42, compared with 0.46 in the Optimized House Map. Duchin Aff. 5.
- The Enacted House Plan splits 112 municipalities into 292 parts, compared with—in the Optimized House Map—splitting just 71 municipalities into only 201 parts. Duchin Aff. 6; Verified Compl. ¶ 179.

C. Plaintiffs Are Likely to Succeed in Showing That the Enacted Plans’ Partisan Gerrymanders Violate the North Carolina State Constitution.

Plaintiffs are likely to succeed in showing that this partisan gerrymandering yields the same violations of the Free Elections, Equal Protection, and Free Speech and Free Assembly Clauses that Judges Ridgeway, Crosswhite, and Hinton unanimously found in *Common Cause* and *Harper*.

1. Plaintiffs Are Likely to Succeed in Showing a Violation of the Free Elections Clause.

The Enacted Plans do the same thing as the maps that *Common Cause* invalidated as violating the Free Elections Clause. They were “designed, specifically and systematically, to maintain Republican majorities” in Congress and the General Assembly. *Common Cause*, 2019 WL 4569584, at *112. And they are “gerrymandered to be most resilient in electoral environments where Democrats could win majorities ... under nonpartisan plans.” *Id.* To summarize:

- In closely divided elections, the Enacted Plans guarantee Republican candidates a 6-seat advantage in the congressional delegation, a 6-seat advantage in the Senate, and a 16-seat advantage in the House. *Supra* pp. 26, 33, 41.
- Even when Democratic candidates win the statewide vote by significant margins, the Enacted Plans guarantee Republican candidates 9 seats in Congress, 26 Senate seats, and 62 House seats. *Supra* pp. 27, 34, 41.
- Democrats cannot obtain majorities unless they win the statewide vote by at least 7 percentage points, which is highly unlikely. *Supra* pp. 26–27, 33, 35, 41–42.

In short, as in *Common Cause* and *Harper*, the majority party has “manipulated district boundaries, to the greatest extent possible, to control the outcomes of individual races so as to best ensure [its] continued control.” *Common Cause*, 2019 WL 4569584, at *112; *Harper*, 2019 N.C. Super. LEXIS 122, at *8–9, *16–18. Because of the Enacted Plans, it is now “nearly impossible for the will of the people—should that will be contrary to the will of the partisan actors drawing the maps—to be expressed through their votes.” *Common Cause*, 2019 WL 4569584, at *112.

No more is needed to violate the Free Elections Clause. When a law implicates the Free Elections Clause, “it is the effect of the act, and not the intention of the Legislature, which renders it void.” *Van Bokkelen*, 73 N.C. at 225–26; see *Common Cause*, 2019 WL 4569584, at *112–13. True, the *Common Cause* panel found that the General Assembly acted intentionally in drawing the maps there. *E.g.*, 2019 WL 4569584, at *129. But it did not hold that intent is *necessary* to violate the Free Elections Clause, and for good reason: If the General Assembly violates the bedrock command that “elections shall be free,” *id.* at *3, it is no answer to insist that the General Assembly did not *mean* to prevent the “will of the people” from governing, *id.* at *112.

Regardless, Plaintiffs are likely to succeed in showing that the General Assembly intended to manufacture the unconstitutional gerrymander the Enacted Plans yield. Intent “may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one [group] than another.” *Holmes v. Moore*, 270 N.C. App. 7, 17, 840 S.E.2d 244, 255 (2020) (quoting *Washington v. Davis*, 426 U.S. 229, 242 (1976)); see *Common Cause*, 2019 WL 4569584, at *114. Here, though no discovery has occurred, already the “circumstantial ... evidence of intent” is overwhelming. *Holmes*, 270 N.C. App. at 16, 840 S.E.2d at 254.

Plaintiffs expect the General Assembly to insist that it did not intend the biased results of the Enacted Plans and to point to the redistricting criterion stating that “[p]artisan considerations and election results data shall not be used.” *Supra* pp. 8–9; see Ex. N at 2. That story, however, does not withstand scrutiny. Accepting it would require believing all of the following:

1. That the General Assembly drew a congressional map that yields 10 Republican and 4 Democratic seats, even in close elections in which Democrats win a majority of the statewide vote—*by accident*. *Supra* p. 26; *cf. Holmes*, 270 N.C. App. at 17, 840 S.E.2d at 255 (“disproportionate impact” is circumstantial evidence of intent).
2. That the General Assembly baked in a 6-seat Republican Senate majority and a 16-seat House majority, even when Democratic candidates win a majority of the statewide vote—*without realizing it*. *Supra* pp. 33, 41.

3. That the General Assembly prevented Democratic candidates from winning majorities in the congressional delegation, the state Senate, or the state House unless they perform the rare feat of winning the statewide vote by more than 7 points—*by happenstance*. *Supra* pp. 27, 35, 42.
4. That when, to take just one example, the General Assembly split the three counties with the largest numbers of Democratic voters in the state—and only those three counties—three ways each, it was *coincidence*. *Supra* pp. 28–31.¹⁸
5. That even though the General Assembly adopted the Enacted Plans after being repeatedly told that the maps constituted partisan gerrymanders, *see* Verified Compl. ¶ 89 & n.27; Liberman Aff. ¶¶ 3–4; Feldman Aff. Exs. AA–AB, Defendants did not *mean* to gerrymander. *Cf. Holmes*, 270 N.C. App. at 17, 840 S.E.2d at 255 (“legislative history” can provide circumstantial evidence of intent).
6. That after *Common Cause* and *Harper* in 2019 found that the General Assembly engaged in “intentional ... and systematic gerrymandering,” *Common Cause*, 2019 WL 4569584, at *129—and after courts had invalidated other maps as unconstitutional racial gerrymanders, *supra* pp. 6–7—Defendants in 2021 just *stumbled upon* equally skewed maps. *Cf. Holmes*, 270 N.C. App. at 17, 840 S.E.2d at 255 (“historical background of the [challenged] decision” can provide circumstantial evidence of intent).
7. That when the General Assembly did not act after being told that its paper ban on “[p]artisan considerations and election results” was sure to be violated, Verified Compl. ¶ 70; Liberman Aff. ¶ 2, that had *nothing to do* with the General Assembly’s understanding that its mapmakers would rely on partisan considerations outside the hearing rooms. *Cf. State v. Bogle*, 324 N.C. 190, 194, 376 S.E.2d 745, 747 (1989) (“The willful blindness doctrine permits a jury to find that a defendant has knowledge of the material facts because he has deliberately chosen to remain ignorant of illegal activity that would have been disclosed by further investigation.”).¹⁹

¹⁸ The list can, and does, go on. For example, when the General Assembly drew its least compact Senate and House districts (Senate District 2 and House District 116), those districts replaced a more compact Democratic district with a less compact Republican one. Verified Compl. ¶¶ 104(c), 119. That is not a coincidence. Nor is it a coincidence that the Enacted House and Enacted Senate Plans traverse county boundaries more often than necessary, lower compactness more than necessary, and split more municipalities than necessary and more times than necessary. Duchin Aff. 5–6.

¹⁹ Indeed, the last round of court-ordered redistricting in 2019 showed exactly what will happen, even when the redistricting criteria on paper prohibit consideration of partisan data: Repeatedly, Republican mapmakers were observed leaving the committee hearing room, amending the map, and then returning and amending maps on the computers in the committee hearing rooms. *Harper v. Lewis*, No. 19-CVS-012667, Plaintiffs’ Opposition to Legislative Defendants’ Motion for Summary Judgment 4–6 & n.4 (N.C. Super. Ct. Nov. 22, 2019) (describing “Senator Hise’s

8. That even though the General Assembly was warned by legislators in both chambers that the maps were unconstitutional partisan gerrymanders, it had ***no idea*** that the maps it enacted would have this effect. Verified Compl. ¶ 98; Liberman Aff. ¶ 3; *see also* Verified Compl. ¶ 89.
9. That when the General Assembly adopted a rushed process that limited public and expert scrutiny of its proposed maps before their enactment, *supra* pp. 9–11, that choice again had ***nothing to do*** with the gerrymandered results the General Assembly knew such scrutiny would spotlight. *Cf. Holmes*, 270 N.C. App. at 17, 840 S.E.2d at 255 (“[d]epartures from normal procedural sequence” are relevant evidence of intent).

The reality is that the General Assembly enacted extreme partisan gerrymanders because it ***wanted*** to do so. And the General Assembly declined to enact fair and neutral maps like the Optimized Maps because it ***did not want*** fair maps. Indeed, nearly 50 years ago, the U.S. Supreme Court gave the short answer to similarly incredible claims that map-drawers did not intend their actions’ foreseeable consequences: “[I]t is most unlikely that the political impact” of a gerrymander “would remain undiscovered by the time it was proposed or adopted, in which event the results would be both known and, if not changed, intended.” *Gaffney*, 412 U.S. at 753. The same is true here, and Defendants cannot dodge liability for their partisan gerrymanders by claiming that they did not know what they were doing.

2. Plaintiffs Are Likely to Succeed in Showing a Violation of the Equal Protection Clause.

Plaintiffs are also likely to succeed in showing that the Enacted Plans violate the North Carolina State Constitution’s Equal Protection Clause. As *Common Cause* held, a partisan gerrymander violates that clause when (1) a “‘predominant purpose’” of the map drawers was to “‘entrench [their party] in power’”; and (2) the maps “have the intended effect” and “‘substantially’ dilute [the disfavored party’s] votes.” *Common Cause*, 2019 WL 4569584, at *114 (quoting *Ariz.*

repeated entering and exiting of the hearing room” while map-drawing, which “received substantial public attention”).

State Legis., 135 S. Ct. at 2658). Here, the Enacted Plans do both those things, for reasons already explained: They are “carefully crafted to favor Republicans” and “intentionally and systematically pack and crack Democratic voters,” *id.* at *115—so that the incumbent Republican Party will retain majorities in the congressional delegation, the Senate, and the House for a decade even if voters prefer the other party by significant margins.

Nor can Defendants “provide a legitimate, non-partisan justification” for the Enacted Plans’ partisan gerrymanders. *Id.* at *114. As the Optimized Plans show, the General Assembly could have drawn maps that comply with state law and traditional, neutral redistricting principles while avoiding an unconstitutional gerrymander. *Supra* pp. 26–28, 31–35, 39–42, 45. And as just explained, the General Assembly’s Republican majority declined to enact such maps precisely because it *desired* to entrench itself. “Advantaging a particular political party or discriminating against voters based on how they vote for the purposes of entrenching a political party’s power is not a compelling government interest.” *Common Cause*, 2019 WL 4569584, at *117.

3. Plaintiffs Are Likely to Succeed in Showing a Violation of the Free Speech and Free Assembly Clauses.

Finally, Plaintiffs are likely to succeed in showing that the Enacted Plans violate the Free Speech and Free Assembly Clauses.

First, the Enacted Plans constitute “viewpoint discrimination” (as well as retaliation) against certain voters and dilute their votes, based on the viewpoints they express—namely, that they favor the Democratic Party, which the Enacted Plans seek to exclude from power. *Common Cause*, 2019 WL 4569584, at *121, *123. A law “need not explicitly mention any particular viewpoint to be impermissibly discriminatory.” *Id.* at *121 (citing *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015)). Instead, as under the Equal Protection Clause, discriminatory intent may be inferred from circumstantial evidence, including the “impulse behind [a law], or the lack

of any plausible [alternative] explanation.” *Id.* (quoting *State v. Bishop*, 368 N.C. 869, 875, 787 S.E.2d 814, 819 (2016)). Here, that evidence compels the same conclusion as above: The Enacted Plans intended to target, and retaliate against, supporters of the disfavored party.

Second, the Enacted Plans violate associational rights in all the ways explained above. *Supra* pp. 46–50. They prevent “Democratic voters who live in cracked districts [from] instruct[ing] their representatives or obtain[ing] redress from their representatives”; they make it harder for the disfavored parties and for politically oriented associations to “carry out [their] core functions and purposes”; and they force these organizations “to drain and divert resources ... merely to avoid being relegated to a superminority.” *Common Cause*, 2019 WL 4569584, at *122–23. And the Enacted Plans do so because of the viewpoints that these organizations, through these activities, express.

Such burdens on core political rights trigger “strict scrutiny.” *Bishop*, 368 N.C. at 875, 787 S.E.2d at 819; *accord Common Cause*, 2019 WL 4569584, at *121. But again, Defendants have offered “no credible justification for their partisan discrimination.” *Common Cause*, 2019 WL 4569584, at *123. “Nor could they have,” as the *Common Cause* three-judge panel observed: “Discriminating against citizens based on their political beliefs does not serve any legitimate government interest.” *Id.*

D. Plaintiffs Have Standing to Assert All Their Claims.

Plaintiffs also have standing to assert all their claims. The North Carolina State Constitution provides that “[a]ll courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.” N.C. Const. art. I, § 18. “[B]ecause North Carolina courts are not constrained by the ‘case or controversy’ requirement of Article III of the United States Constitution, our State’s standing jurisprudence is broader than federal law.” *Davis*

v. New Zion Baptist Church, 258 N.C. App. 223, 225, 811 S.E.2d 725, 727 (2018). In North Carolina, plaintiffs need show only “(1) the presence of a legally cognizable injury; and (2) a means by which the courts can remedy that injury.” *Id.* Here, for two reasons, Plaintiffs can easily make that showing, just like the similar plaintiffs in *Common Cause* and *Harper*.

First, plaintiffs have standing to challenge gerrymandering in districts and clusters where they reside—or for an association like NCLCV, districts or clusters where its members reside. Courts applying federal standing law have found that gerrymandering plaintiffs claiming vote dilution have standing to “challenge ... their own districts on partisan gerrymandering grounds.” *Common Cause*, 2019 WL 4569584, at *108. And as *Common Cause* observed, “in light of the less stringent standing requirements in our State, and because the manner in which one district is drawn in a county grouping necessarily is tied to the drawing of some, and possibly all, of the other districts within that same grouping,” North Carolina partisan gerrymandering plaintiffs also have standing to “challenge ... the entire county grouping.” *Id.*

Here, those principles provide standing to challenge every unlawful aspect of the Enacted Plans. The Individual Plaintiffs hale from many congressional districts and Senate and House clusters from across the State.²⁰ But more to the point, NCLCV “has members who are registered Democratic voters in all 14 districts under the Enacted Congressional Plan, all 50 districts under the Enacted Senate Plan, and all 120 districts under the Enacted House Plan.” Verified Compl. ¶ 11 n.4. Hence, just like the North Carolina Democratic Party in *Common Cause*, NCLCV has standing because its members include “registered Democratic voters located in every state House and state Senate District across our State.” 2019 WL 4569584, at *107.

²⁰ The Individual Plaintiffs reside in enacted Congressional Districts 2, 4, 6, 11, 12, 13; enacted Senate Districts 2, 4, 12, 20, 23, 27, 32, 37; and enacted House Districts 6, 10, 27, 29, 56, 58, 61, 72, 98.

An association, like NCLCV, has standing “to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *River Birch Assocs. v. City of Raleigh*, 326 N.C. 100, 130, 388 S.E.2d 538, 555 (1990). Here, first, NCLCV’s members would have standing to challenge their districts and clusters in their own right, as just explained. Second, the interests NCLCV seeks to vindicate here are “germane to [its] purpose.” *Id.* NCLCV seeks to “elect legislators and statewide candidates who share its values,” to “build a pro-environment majority across ... North Carolina,” and to “hold elected officials accountable for their votes and actions.” Verified Compl. ¶ 11. Challenging the Enacted Plans’ partisan gerrymanders—which will thwart this pro-environment majority and make it impossible to hold officials to account—is “germane” to these purposes. Finally, just as in *Common Cause*, the “declaratory and injunctive relief” sought here does not “require[] the participation of individual ... members in this lawsuit.” 2019 WL 4569584, at *107.

Second, NCLCV and the Individual Plaintiffs have standing to seek redress for the *statewide* harms that the Enacted Plans inflict on their ability to pursue their goals, to associate with candidates and other concerned citizens, and to further the public good. Verified Compl. ¶ 223. In *Common Cause*, the association Common Cause had standing “to sue on its own behalf” to redress similar harms. 2019 WL 4569584, at *107. That was so because “one of [its] central missions ... is to ... hold their [legislators] accountable”—and when partisan gerrymandering renders “legislative seats ... preordained,” it “impede[s] [that] mission.” *Id.* at *77. The same is true of NCLCV, which similarly “works to hold elected officials accountable” and suffers the same sort of harm when partisan gerrymanders predetermine election results. Verified Compl. ¶ 12.

More than that, the Enacted Plans impair NCLCV’s ability to engage in effective advocacy for candidates and will force NCLCV to expend additional funds and other resources to counteract their gerrymandered effects. *Id.* Case after case has recognized such “non-dilutionary” harms as sufficient to support statewide standing for organizations like NCLCV (including the North Carolina League of Women Voters and Common Cause), including in many cases cited with approval in *Common Cause*.²¹

Many of the Individual Plaintiffs suffer similar harms. Many consistently vote for Democratic candidates, Verified Compl. ¶¶ 14–16, 18–28, and several are active in Democratic politics, work to elect Democratic candidates, and support Democratic causes. *Id.* ¶¶ 14, 27. When gerrymandering “infring[es] on ‘the ability of like-minded people across the State to affiliate in a political party and carry out that organization’s activities and objects,’” such individuals have standing to challenge it.²²

²¹ *E.g.*, *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 829 (M.D.N.C. 2018) (three-judge panel) (recognizing that partisan gerrymandering inflicts “injuries ... such as infringing on ‘the ability of like-minded people across the State to affiliate in a political party and carry out that organization’s activities and objects’” and that such harms have “‘nothing to do with the packing or cracking of any single district’s lines’” and instead “‘the injury [is] statewide.’” (quoting *Gill v. Whitford*, 138 S. Ct. 1916, 1939 (2018) (Kagan, J., concurring))), *vacated and remanded on other grounds*, 139 S. Ct. 2484 (2019); *Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978, 1076 (S.D. Ohio) (three-judge panel) (Ohio A. Philip Randolph Institute and the League of Women Voters of Ohio had standing because gerrymandered map “negative[ly] impact[ed] ... their ability effectively to associate to advance their belief in active and informed voter participation in the democratic process”), *vacated and remanded on other grounds*, 140 S. Ct. 101 (2019); *League of Women Voters of Mich. v. Johnson*, 352 F. Supp. 3d 777, 802 (E.D. Mich. 2018) (three-judge panel) (League of Women Voters of Michigan had standing because gerrymandered maps “made [the League’s] mission of education and engagement much harder in a variety of ways.”), *rev’d and remanded on other grounds*, No. 18-2383, 2018 WL 10096237 (6th Cir. Dec. 20, 2018).

²² *Common Cause*, 318 F. Supp. 3d at 829; *accord League of Women Voters of Mich.*, 352 F. Supp. 3d at 801; *Ohio A. Philip Randolph Inst.*, 373 F. Supp. 3d at 1075.

II. The Court Should Enjoin Defendants from Using the Enacted Plans in the 2022 Primary Election, as Well as Grant Certain Ancillary Relief.

Because the Enacted Plans are unconstitutional partisan gerrymanders, the Court should grant the preliminary relief Plaintiffs have sought and enjoin Defendants from preparing for, administering, or conducting the 2022 primary election under any of the Enacted Plans. A preliminary injunction requires that the plaintiffs be “likely to sustain irreparable loss unless the injunction is issued” or that “issuance [be] necessary for the protection of a plaintiff’s rights during the course of litigation.” *A.E.P. Indus.*, 308 N.C. at 401, 302 S.E.2d at 759–60. North Carolina courts “engage in a balancing process, weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted.” *Williams v. Greene*, 36 N.C. App. 80, 86, 243 S.E.2d 156, 160 (1978).

A. Absent a Preliminary Injunction, Plaintiffs Will Suffer Irreparable Harm.

The irreparable harm that Plaintiffs will suffer, absent preliminary relief, is clear and obvious: Millions of North Carolinians—including the Individual Plaintiffs and many NCLCV members—will vote under unlawful maps that drain their voting rights of all meaning, and Plaintiffs will be unable to effectively speak for and associate with the political candidates of their choice. The loss of constitutional rights, “for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). In particular, “[c]ourts routinely deem restrictions on fundamental voting rights irreparable injury.” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). That is because an infringement of “voting and associational rights ... cannot be alleviated after the election.” *Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 883 (3d Cir. 1997).

North Carolina courts have repeatedly applied these principles to enjoin unlawful redistricting maps. In *Harris v. McCrory*, the court enjoined maps that were racial gerrymanders

because “[t]o force the plaintiffs to vote ... under the unconstitutional plan ... constitutes irreparable harm.” No. 1:13CV949, 2016 WL 6920368, at *1 (M.D.N.C. Feb. 9, 2016). In *Covington v. North Carolina*, the court enjoined another gerrymander because the court would not “forc[e] North Carolina voters to cast ballots under unconstitutional maps.” No. 1:15CV399, 2018 WL 604732, at *6 (M.D.N.C. Jan. 26, 2018) (three-judge panel). And in *Harper*, the Court enjoined an unconstitutional partisan gerrymander because “[t]he loss to Plaintiffs’ fundamental rights guaranteed by the North Carolina constitution will undoubtedly be irreparable if ... elections” are allowed to proceed under unlawful maps. *Harper*, 2019 N.C. Super. LEXIS 122, at *14. Indeed, in *Common Cause*, the Court *sua sponte* declined to grant a stay pending appeal because such a stay would force “Plaintiffs and other North Carolina voters” to “cast their ballots under unconstitutional district plans.” 2019 WL 4569584, at *134.

B. The Balance of Equities Also Favors Injunctive Relief.

The “balancing of the equities” here, *A.E.P. Indus.*, 308 N.C. at 400, 302 S.E.2d at 759, is not close. On the one side, Plaintiffs’ claims concern “fundamental right[s] ... enshrined in our Constitution’s Declaration of Rights, a compelling governmental interest, and a cornerstone of our democratic form of government.” *Common Cause*, 2019 WL 4569584, at *110. The Supreme Court has thus mandated that “fair and honest elections are to prevail in this state.” *Id.* at *128 (quoting *McDonald v. Morrow*, 119 N.C. 666, 673, 26 S.E. 132, 134 (1896)). That can occur *only* if the Court enjoins the use of the unlawful Enacted Plans. As in *Harper*, “if the injunction is not granted,” the “people of our State will lose the opportunity to participate in congressional elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Harper*, 2019 N.C. Super. LEXIS 122, at *20.

On the other side, granting an injunction will not impose any harm at all. Defendants, as representatives and officers of the People, share—or should share—the same interest in free and

fair elections. Nor will granting an injunction yield any substantial disruption. The 2022 primary remains more than three months away, and preparations cannot start in earnest until the close of the candidate-filing period, which is currently scheduled to run from December 6 to December 17. At most, preliminary relief may require a modest delay in the primary. But while the General Assembly might “prefer not to move elections or otherwise change the current schedule,” it has “acknowledge[d] that the election schedule can be changed if necessary.” *Id.* Indeed, when necessary, North Carolina primary elections have been delayed, and candidate-filing periods have been deferred.²³

Here, any delay-based concerns are especially trivial: The primary is currently set for March only because the General Assembly refused to move it even after the State Board of Elections ***told it*** that doing so was necessary to accommodate census delays. Moreover, even if the primary is delayed until May 3—as Plaintiffs have identified as an option, Verified Compl. ¶ 190—that still leaves North Carolina with the Nation’s ***second-earliest*** 2022 congressional primary, after only Texas. *Supra* p. 10. A May primary will not burden, at all, North Carolina’s

²³ *Harper*, 2019 N.C. Super. LEXIS 122, at *24–25 (preliminarily enjoining legislative defendants and State Board of Elections “from preparing for or administering the 2020 primary and general elections” and retaining jurisdiction “to move the primary date for the congressional elections, or all of the State’s 2020 primaries, including for offices other than Congressional Representatives, should doing so become necessary to provide effective relief”); Order at 2, *Harper v. Lewis*, No. 19-CVS-012667 (N.C. Super. Ct. Nov. 20, 2019) (available at <https://www.brennancenter.org/sites/default/files/2019-11/2019-11-20-Harper%20v.%20Lewis-Order.pdf>) (enjoining filing period for the 2020 congressional primary elections “until further order,” to “allow the Court sufficient opportunity” to review the remedial maps recently enacted by the General Assembly); *see also* Order at 1, *Harper v. Lewis*, No. 19-CVS-012667 (N.C. Super. Ct. Dec. 2, 2019) (available at <https://www.brennancenter.org/sites/default/files/2019-12/2019-12-02-Order%20on%20Prior%20Injunction%20and%20BOE%20filing.pdf>) (setting aside the injunction delaying the filing period for the congressional elections and ordering that period to begin by directing the State Board to “immediately accept for filing any notices of candidacy” from congressional candidates); Affidavit of Gary Bartlett ¶ 11, *N.C. State Conf. of NAACP v. Berger*, No. 21-CVS-014476 (Super. Ct., Wake Cnty. Nov. 5, 2021) (describing “delayed primaries in the 1990s, in 2002, and in 2004”).

ability to complete its primary process well in advance of the November 2022 general election. And to the extent that modest delay counts as a cost at all, it is a small price to pay to safeguard the constitutional voting rights of millions of North Carolinians.

C. The Court Should Grant Certain Ancillary Relief.

The Court can further guard against any disruption by granting the ancillary relief Plaintiffs have sought in their Motion.

First, although North Carolina law presumptively allows the General Assembly two weeks to enact its own remedial maps, N.C. Gen. Stat. § 120-2.4(a), the Court should prepare for the possibility that the General Assembly does not timely enact remedial maps that fully remedy the Enacted Plans’ constitutional violations. Immediately upon issuing an order enjoining the use of the Enacted Plans, the Court should commence remedial proceedings simultaneously with that two-week period—just as the three-judge panel did in *Common Cause*. *See Common Cause*, 2019 WL 4569584, at *134 (“Notwithstanding the General Assembly having the opportunity to draw Remedial Maps in the first instance, the Court will still immediately appoint a Referee to (1) assist the Court in reviewing any Remedial Maps enacted by the General Assembly; and (2) to develop remedial maps for the Court should the General Assembly fail to enact lawful Remedial Maps within the time allowed.”).

Plaintiffs respectfully submit that these remedial proceedings should focus on Plaintiffs’ Optimized Maps. Those maps show what is possible, consistent with state law and traditional, neutral districting principles, and should provide the benchmark against which other remedial plans—including any enacted by the General Assembly—should be measured. And Plaintiffs respectfully submit that unless the General Assembly timely adopts districting plans that remedy the constitutional violations found in the Enacted Plans as fully as would the Optimized Maps,

then the Optimized Maps should *become* the maps for the 2022 elections for Congress, the state Senate, and the state House. The Court should commence proceedings aimed at that contingency.²⁴

Second, to the extent the Court deems a delay in the 2022 primary necessary, it should order Defendants to delay the candidate-filing period until a reasonable time after the Court’s approval of lawful maps, as North Carolina courts have done before. Mot. 2; *supra* p. 57 n.23.

Third, the Court should order relief to address the requirement in Sections 6 and 7 of Article II of the North Carolina State Constitution providing that each Senator and Representative, at the time of their election, shall have resided “in the district for which he is chosen for one year immediately preceding his election.” That date—November 8, 2021—has already passed. The only maps enacted by that date, however, are the unlawful Enacted Plans. And candidates, obviously, may not have yet established residency in their desired districts under the lawful remedial maps that this Court ultimately approves. Hence, this Court should issue the same relief that the *Covington* court provided and order that, if any citizen has established his or her residence in a Senate or House district modified by any remedial redistricting plan approved by this Court, then that citizen shall be qualified to serve if elected to that office, notwithstanding the requirements that Sections 6 and 7 of Article II of the North Carolina State Constitution would

²⁴ Depending on when this Court issues a preliminary injunction and where that date falls with respect to the primary election, the Court should also retain discretion to shorten or eliminate the two-week period that North Carolina law presumptively provides for the General Assembly to enact remedial maps. That is because the Court may face a choice of which of two state laws it must set aside (in addition to the Enacted Plans). State law establishes the primary date, N.C. Gen. Stat. § 163-1(b), and also presumptively gives the General Assembly two weeks to enact remedial maps, *id.* § 120-2.4(a). The Court may find that it can adhere—or can adhere more closely—to the designated election date only by shortening or eliminating the two-week period. In those circumstances, where the Court cannot fully comply with both statutes, the Court has discretion to shorten or eliminate the two-week period.

otherwise impose. *See Covington v. North Carolina*, 267 F. Supp. 3d 664, 668 (M.D.N.C. 2017) (three-judge panel) (entering similar order).²⁵

²⁵ The Court should not require Plaintiffs to post a bond. North Carolina Rule of Civil Procedure 65(c) requires the applicant for an injunction to provide a security “in such a sum *as the judge deems proper*” (emphasis added) and thereby affords the court the authority to “to dispense with” the security requirement in appropriate circumstances. *Keith v. Day*, 60 N.C. App. 559, 562, 299 S.E.2d 296, 298 (1983). Here, “the restraint will do the defendant ‘no material damage,’” “there ‘has been no proof of likelihood of harm,’” and there is no likelihood that any party will incur any recoverable “costs and damages” for which a bond would be necessary. *Id.* Therefore, this is an “instance[] when it is proper for no security to be required of a party seeking injunctive relief.” *Id.* If a bond is required, it should be in an amount not exceeding \$1,000, as in *Harper*. *See Harper*, 2019 N.C. Super. LEXIS 122, at *25.

CONCLUSION

Plaintiffs respectfully request that the Court grant the relief sought in Plaintiffs' motion.

Dated: December 1, 2021

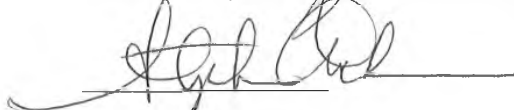
Respectfully submitted,

JENNER & BLOCK LLP

Sam Hirsch*
Jessica Ring Amunson*
Kali Bracey*
Zachary C. Schauf*
Karthik P. Reddy*
Urja Mittal*
JENNER & BLOCK LLP
1099 New York Avenue NW, Suite 900
Washington, D.C. 20001
(202) 639-6000
shirsch@jenner.com
zschauf@jenner.com

* *Admitted pro hac vice*

ROBINSON, BRADSHAW & HINSON, P.A.



Stephen D. Feldman
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
(919) 239-2600
sfeldman@robinsonbradshaw.com

Adam K. Doerr
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
(704) 377-2536
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
ROBINSON, BRADSHAW & HINSON, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
(919) 328-8800
ezimmerman@robinsonbradshaw.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing document was served upon the parties by e-mailing a copy thereof to the address indicated below in accordance with the North Carolina Rules of Civil Procedure to the following addresses:

Phillip J. Strach
Thomas A. Farr
John E. Branch, III
Alyssa M. Riggins
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
phillip.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
John.Branch@nelsonmullins.com
alyssa.riggins@nelsonmullins.com

Mark E. Braden*
Katherine McKnight*
Richard Raile*
Baker Hostetler LLP
1050 Connecticut Avenue, NW, Suite 1100
Washington, DC 20036
mbraden@bakerlaw.com
kmcknight@bakerlaw.com
rraile@bakerlaw.com

*Counsel for Defendants Representative
Destin Hall, Senator Warren Daniel,
Senator Ralph E. Hise, Jr., Senator Paul
Newton, Representative Timothy K. Moore,
and Senator Philip E. Berger.*

** Pro hac vice motion forthcoming*

Stephanie Brennan
Amar Majmundar
Terence Steed
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27502-0629
tsteed@ncdoj.gov
sbrennan@ncdoj.gov
amajmundar@ncdoj.gov

*Counsel for Defendants the North Carolina
State Board of Elections, Damon Circosta,
Stella Anderson, Jeff Carmon III, Stacy
Eggers IV, Tommy Tucker, Karen Brinson
Bell; and the State of North Carolina*

This the 1st day of December, 2021.



Stephen Feldman

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 500085

REBECCA HARPER, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

**LEGISLATIVE DEFENDANTS’ MEMORANDUM OF LAW IN OPPOSITION TO
NCLCV AND HARPER PLAINTIFFS’ MOTIONS FOR PRELIMINARY INJUNCTION**

In 2019, a three-judge panel issued the unprecedented ruling that partisan intent in redistricting is unconstitutional, even though the North Carolina Supreme Court seventeen years earlier had ruled that “[t]he General Assembly may consider partisan advantage and incumbency

protection in the application of its discretionary redistricting decisions.” *Stephenson v. Bartlett*, 355 N.C. 354, 371, 562 S.E.2d 377, 390 (2002). Notwithstanding that the North Carolina Constitution “clearly contemplates districting by political entities” and that this is “root-and-branch a matter of politics,” *Vieth v. Jubelirer*, 541 U.S. 267, 285 (2004) (plurality op.), the panel determined that the way redistricting had occurred in North Carolina for decades—primarily under Democratic Party control—was suddenly unconstitutional. But that opinion offered no standards or guidance to guide future General Assemblies in crafting constitutional districting plans.

Now, the preliminary-injunction motions pending before this Court seek to extend that panel’s holding, thereby exposing it as a threat to constitutional order in this State. Despite that the 2021 redistricting was the most transparent and non-partisan legislative redistricting in North Carolina and voluntarily followed to the letter the process the three-judge panel ordered for the 2019 remedial phase, a few private persons employing sophisticated experts who can make a computer simulation show anything at will—are dissatisfied. They think there are better district configurations than what the peoples’ representatives chose. And they ask this Court to employ the judicial power of the State to pick their preferred configurations over the General Assembly’s, even though the North Carolina and U.S. Constitutions delegate this *legislative* power to the General Assembly. These suits show that the *Common Cause* ruling does not provide any judicially manageable standard and will lead only to constant redistricting litigation, regardless of what the General Assembly actually does. Future plaintiffs could as easily disagree with the present Plaintiffs as the present Plaintiffs can disagree with the General Assembly.

This Court should reject the justiciability holding of the 2019 panel or, at a minimum, restrict the holding to its facts, which are not remotely present in 2021. These lawsuits are not likely to succeed, and there is no equitable merit to the motions for interlocutory injunctions, which

seek to impose on a *provisional* basis the will of a tiny minority against “the will of the people, legally expressed.” *State v. Lattimore*, 120 N.C. 426, 26 S.E. 638, 638 (1897). The motions should be denied.

Background

A. Historical Background and Prior Litigation

After each decennial census, “States must redistrict to account for any changes or shifts in population.” *Georgia v. Ashcroft*, 539 U.S. 461, 489 n.2 (2003). In North Carolina, the State Constitution commits that task solely to the authority of the General Assembly. N.C. Const. art. II, §§ 3, 5. “Redistricting is never easy.” *Abbott v. Perez*, 138 S. Ct. 2305, 2314 (2018). It has not been easy in North Carolina. The lawsuits of both sets of Plaintiffs should be understood against a lengthy historical and procedural background, which is summarized below.

1. Reconstruction Through the 2000s Cycle

“North Carolina has an extensive history of problematic redistricting efforts tracing back to the 1730s, which has generated significant litigation.” *Dean v. Leake*, 550 F. Supp. 2d 594, 597 (E.D.N.C. 2008). From Reconstruction through the 2000 redistricting cycle, the Democratic Party controlled the redistricting process and was responsible for those “problematic redistricting efforts.”

a. “After the Reconstruction Era and the rejuvenation of the Democratic Party, the practice of gerrymandering . . . became a favored tactic in gaining partisan control of the congressional delegation.” D. Orr, Jr., *The Persistence of the Gerrymander in North Carolina Congressional Redistricting*, 9 *Southeastern Geographer* 29, 43 (1969). The paradigmatic example were the “bacon-strip” districts:

Republican strength in North Carolina had been concentrated in the western mountain sections, where similar social and economic

interests prevail. If those counties were combined into congressional districts, Republican congressmen would be elected. Democrats have chosen the dispersal alternative. A few Republican counties are grouped with Democratic counties in the central section of the state. The effect created one-county wide congressional districts that run horizontally across the state, creating what some have called bacon strips.

Leroy C. Hardy, *Considering the Gerrymander*, 4 Pepp. L. Rev. 243, 258–59 (1976). “One such district extended from Pender County on the coast, westward along the South Carolina line through seven more counties all the way to Mecklenburg, a total distance of approximately 250 miles.” Orr, *supra*, at 43.

No equal-population requirement curbed the Party’s political aims, and the notion that a partisan-fairness requirement was lurking then and there in the State Constitution was preposterous to them. *Id.* The result of “180 years” of Democratic dominance in redistricting was “the rural domination of the [S]tate’s congressional delegation” and the frustration of “the rising tide of Republicanism” in the State. *Id.* at 39.

In fact, when a Republican congressional candidate, Charles Jonas, successfully tailored his message to win one of the bacon-strip districts, the Democratic General Assembly promptly redrew the lines to pair him with a Democratic member in a district predominantly composed of Democratic-leaning territory (which could as easily be identified then as now, because vote totals then and now are reported at the precinct level). *Id.* at 44. But voters have free will:

Amid Republican charges of gerrymandering, Jonas soundly defeated [the Democratic incumbent] in the 1962 election. In addition, when the legislators ‘stacked’ the Eighth District boundaries so as to include a preponderance of Democratic counties, they simultaneously gave the adjoining Ninth District an increased Republican character, an oversight which allowed another Republican, James T. Broyhill of Caldwell County, also to be elected to Congress.

Id. Rep. Jonas received no assistance from the State courts in winning elections.

In the first redistricting after the Supreme Court announced the one-person, one-vote rule, the Democratic-controlled General Assembly drew districts that “were as distorted as could be found in any state in the country.” *Id.* at 46. A court invalidated that plan for failure to comply with the one-person, one-vote rule, but allowed an election to occur under it because of “the tremendous gulf which existed between the status quo and the constitutional requirements” and the “imminence of the 1966 primaries.” *Drum v. Seawell*, 250 F. Supp. 922, 925 (M.D.N.C. 1966). Democrats set right back to work, drawing a district that was publicly described as “a dinosaur or a left-handed monkey wrench” that was “‘packed’ with a projected vote favorable to Representative Jonas far in excess of that needed to win.” Orr, *supra*, at 49. Stated differently, Democratic map drawers sought to collect Republican voters in one district and remove them from neighboring districts to make the neighboring districts more favorable to Democratic electoral prospects. Other districts were “hardly compact and barely contiguous.” *Id.* The federal court expressed its disappointment with the obvious gerrymandering, noting “[r]egretfully, we note that tortuous lines still delineate the boundaries of some of the districts” and hoped that, “following the 1970 decennial census,” the districts would be drawn to be “reasonabl[y] compact.” *Drum v. Seawell*, 271 F. Supp. 193, 195 (M.D.N.C. 1967). Nevertheless, it allowed the districts to be used, allowing the Democratic Party to again achieve the spoils of their electoral victory—which “is a compelling reminder that, indeed, ‘elections have consequences.’” *Dickson v. Rucho*, No. 11 CVS 16896, 2013 WL 3376658, at *1 (N.C. Super. July 08, 2013) (Ridgeway, Crosswhite, Hinton, JJ.).

b. The Democratic Party was not done. After the 1980 census, the Democratic-controlled General Assembly redrew the congressional lines, and a paramount concern was its “need . . . to protect its turf and its incumbents.” Beeman C. Patterson, *The Three Rs Revisited: Redistricting, Race and Representation in North Carolina*, 44 *Phylon* 232, 233 (1983). Among the

results of this approach “was the incongruous lines drawn in the Second Congressional District to satisfy the incumbent, L.H. Fountain, who wanted to be sure that urban areas, such as the city of Durham, would be excluded from his district,” resulting in an odd shape “called ‘Fountain’s Fishhook’ because of the way it curved around urban areas.” *Id.* In creating the district, the General Assembly used race as a proxy for politics, as “white congressmen openly manipulated redistricting to buttress their positions against candidates who might appeal to black voters.” J. Morgan Kousser, *Colorblind Injustice: Minority Voting Rights and the Undoing of the Second Reconstruction* 2487 (1999). Indeed, “racial, partisan, and incumbent-protecting goals interacted, often producing unlikely coalitions because of the ‘ripple effects’ of changes in one district on the shape of another.” *Id.*

“‘The incident shows that in drawing districts for a specific political purpose, 20th Century North Carolina legislators [were] not much different from their counterparts in 19th Century Massachusetts.’ ‘The Legislature,’ [a prominent newspaper] paper noted in another editorial a few days later, ‘has given the state districts that are hooked, humped, and generally ungainly—in a word, gerrymandered—to protect incumbents.’” *Id.* at 251 (citation omitted).

c. In 1992, the Democratic-controlled General Assembly drew perhaps the most infamous district of all time, known as the Freeway District:

It is approximately 160 miles long and, for much of its length, no wider than the I-85 corridor. It winds in snakelike fashion through tobacco country, financial centers, and manufacturing areas “until it gobbles in enough enclaves of black neighborhoods.” Northbound and southbound drivers on I-85 sometimes find themselves in separate districts in one county, only to “trade” districts when they enter the next county. Of the 10 counties through which District 12 passes, 5 are cut into 3 different districts; even towns are divided. At one point the district remains contiguous only because it intersects at a single point with two other districts before crossing over them. One state legislator has remarked that “[i]f you drove down the

interstate with both car doors open, you’d kill most of the people in the district.””

Shaw v. Reno, 509 U.S. 630, 635–36 (1993) (*Shaw I*) (citations omitted). In fact, the entire redistricting plan was, as one redistricting expert described it, “a contortionist’s dream,” composed of four of the least compact districts in the nation and districts that “plainly violate the traditional notion of contiguity.” Timothy G. O’Roarke, *Shaw v. Reno and the Hunt for Double Cross-Overs*, 28 Political Science and Politics 36, 37 (March 1995). The plan was drawn in secret by Democratic political consultant John Merritt and “emerged as the result of consultations among aides to incumbent congressmen and members of the redistricting committees”—which, of course, occurred in secret. *See Shaw v. Hunt*, 861 F. Supp. 408, 466 (E.D.N.C. 1994). In short, “the North Carolina legislature threw caution to the wind, sacrificing political community, compactness, and contiguity to a mixture of demands arising from party, incumbency, and race.” *Id.*

Republican-affiliated redistricting plaintiffs asserted that the plan was an unconstitutional partisan gerrymander, and their claim was promptly dismissed. *Pope v. Blue*, 809 F. Supp. 392, 394 (W.D.N.C.), *aff’d*, 506 U.S. 801 (1992).¹ Another set of plaintiffs challenged the majority-minority districts as racial gerrymanders, and their claim succeeded. *See Shaw I*, 509 U.S. at 657–58 (recognizing a cause of action for racial gerrymandering); *Shaw v. Hunt*, 517 U.S. 899, 918 (1996) (*Shaw II*) (striking down the district under this cause of action).

In his dissent, Justice Stevens observed “that this case reveals the *Shaw* claim to be useful less as a tool for protecting against racial discrimination than as a means by which state residents may second-guess legislative districting in federal court for partisan ends.” *Shaw II*, 517 U.S. at 920 (Stevens, J., dissenting).² He observed that Democratic legislators “rejected Republican Party

¹ The “Blue” in that case was now-Senator Dan Blue, who was Speaker of the House at the time.

² *See also Shaw v. Hunt*, 861 F.Supp. 408, 462, 465, 468 (E.D.N.C. 1994) *vacated on other grounds*, noting that Districts 1 and 12 were drawn to primarily protect Democrat incumbents.

maps that contained two majority-minority districts because they created too many districts in which a majority of the residents were registered Republicans.” *Id.* at 937. In other words, the hideous *Shaw* districts were, in his view, really partisan gerrymanders.

Justice Stevens anticipated the Democratic Party’s next move. The General Assembly enacted a new congressional plan containing a new bizarrely shaped district, which “retains the basic ‘snakelike’ shape and continues to track Interstate 85.” *Hunt v. Cromartie*, 526 U.S. 541, 544 (1999) (*Cromartie I*). This time, the General Assembly asserted that it “drew its district lines with the intent to make District 12 a strong Democratic district.” *Id.* at 549.

The Supreme Court accepted this “legitimate political explanation for its districting decision” and rejected the challenge—thereby allowing the Democratic Party to reap the benefit of its control of the General Assembly. *Easley v. Cromartie*, 532 U.S. 234, 242 (2001) (*Cromartie II*). In fact, the Supreme Court gave the partisanship defense a privileged status in redistricting litigation. It emphasized that, where this defense is raised, extra “[c]aution is warranted,” given that “race and political affiliation are highly correlated.” *Id.* Most importantly, the Supreme Court imposed an onerous requirement for a redistricting plaintiff, when the partisanship defense is raised, to present “alternative ways” in which “the legislature could have achieved its legitimate political objectives” with a “greater racial balance.” *Id.* at 258. Partisanship had been established as the best defense to a claim of racial gerrymandering.³

d. Now that partisan gerrymandering had been approved—and became a legally advisable tactic—the Democratic Party plowed into the 2001 redistricting with partisan impunity.

³ Although a state may also defend on the ground that “traditional districting principles,” rather than race, predominated, this has proven to be a weak defense. A plaintiff need not show “alternative ways” in which the redistricting plan could have been drawn, and the plaintiff need not show a departure from traditional districting principles at all. *Bethune-Hill v. Virginia State Bd. of Elections*, 137 S. Ct. 788, 797–800 (2017).

The 2001 congressional plan, like all the Democratic Party’s plans, “were drawn outside of the General Assembly,” in secret. Ex.1, Churchill Dep. 19:11–16. What was *not* secret was the partisan motive. Democratic Representative Wright stated expressly at a Redistricting Committee hearing that the plan was drawn “with the intent of certainly keeping the Democratic advantage.” Ex.2, Nov. 14, 2001 Congressional Redistricting Comm. Tr. 25:22–26. He also agreed that District 13, another visible oddity that ran from Wake County to the Virginia border and then south into Guilford county to pick up highly Democratic areas, was “done to make sure that the 13th was a Democratic district” and, in fact, to be “a more stronger Democrat district than” before, and he expressly clarified that Democratic members were “looking at ways to enhance the performance Democratically” Ex. 2, Nov. 14, 2001 Congressional Redistricting Comm. Tr. 36:8–37:21.⁴

Because this was the legally correct course of action, none of these districts were invalidated. Indeed, no challenge was filed.

2. The 2010s Cycle

In 2011, the Republican Party controlled both chambers of the General Assembly for the first time since Reconstruction—control gained by winning seats in House and Senate redistricting plans drawn and passed by a Democratic-controlled legislature.

a. In the 2011 redistricting, the General Assembly interpreted the Supreme Court’s decision in *Bartlett v. Strickland*, 556 U.S. 1 (2009), which held that VRA § 2 imposes a “majority-minority” rule, *id.* at 17, to require the creation of majority-minority districts with a black voting-age population, or “BVAP,” of at least 50%. Accordingly, the General Assembly included 28 majority-minority house and senate districts in the 2011 legislative plans and two additional

⁴ Like the 1992 Congressional Plan, Democrats in 2001 drew their plan that was eventually adopted by the General Assembly “off site” and in secret. *Dickson v. Rucho* Deposition of Erika Churchill pp. 17-19 & 156-160, attached hereto as Exhibit 1.

majority-minority districts in the congressional plan. Lawsuits were subsequently filed challenging the legislative plans and the congressional plan under the federal Equal Protection Clause. *See Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016); *Harris v. McCrory*, 159 F. Supp. 3d 600 (M.D.N.C. 2016).

The State defended some of the districts on the ground that they were drawn for predominantly political, not racial, reasons. *Cooper v. Harris*, 137 S. Ct. 1455, 1468–69, 1472–73 (2017). That is, the State raised the *Cromartie II* defense, but the district court in the congressional case rejected it. *Harris v. McCrory*, 159 F. Supp. 3d 600, 618–21 (M.D.N.C. 2016). Central to that ruling was its finding that the political explanation was not a sufficiently prominent rationale to protect District 12 because it “was more of a post-hoc rationalization than an initial aim.” *Id.* at 620. The court emphasized that the redistricting chairpersons’ contemporaneous public statements “attempted to downplay” the role of politics and did not, at the time, assert “that their sole focus was to create a stronger field for Republicans statewide.” *Id.* If it had, the legislature could have had sufficient justification for the plan.⁵ A similar ruling was issued in the legislative case. *Covington*, 316 F.R.D. at 139 (“[T]here is no evidence in this record that political considerations played a primary role in the drawing of the challenged districts.”). The Supreme Court affirmed both decisions. *Cooper*, 137 S. Ct. 1455; *North Carolina v. Covington*, 137 S. Ct. 2211 (2017).

b. Having been denied the defense established in *Cromartie II* that allowed the Democrat majority to draw maps favoring their party, the General Assembly set to work redistricting with the Supreme Court’s—and Plaintiffs’ lawyer’s—admonitions in mind. The

⁵ That was the position of the plaintiffs in that case. Their briefing criticized the General Assembly for “revisionist history” and for public statements affirming the importance of the Voting Rights Act while omitting any reference to partisanship. Brief for Appellees, *Cooper*, 133 S. Ct. 1455 (2017) (No. 15-1262) 2016 WL 5957077, at *20 (2016).

General Assembly did not consider race in redrawing the legislative and congressional lines. But because not considering race was insufficient in *Cooper*—since the courts found that it *did* use race despite its contrary assertions—it was necessary to make a clear record to establish the *Cromartie II* defense. In redrawing legislative and congressional boundaries, the General Assembly represented in its criteria and in public statements that partisan data was a predominant criterion used in redistricting.

Plaintiffs, represented by lawyers in this case, sued. First, in November 2018, they challenged the legislative plans in this Court. *Common Cause v. Lewis*, 18 CVS 014001 (filed Nov. 13, 2018). After a year of discovery and a two-week trial, the *Common Cause* court ruled for the first time in North Carolina history that partisan motive in redistricting renders a plan invalid under various provisions of the State Constitution, including its Equal Protection Clause and its Free and Fair Elections Clause. The *Common Cause* court, however, insisted that it was not claiming a judicial right “to engage in policy-making by comparing the enacted maps with others that might be ‘ideally fair’ under some judicially-envisioned criteria.” *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 WL 4569584, at *128 (N.C. Super. Sep. 03, 2019). Rather, it believed that the judicial task is “to take the Adopted Criteria that the General Assembly itself, in its sole discretion, established, and compare the resulting maps with those criteria to see ‘how far the State had gone off that track because of its politicians’ effort to entrench themselves in office.’” *Id.* (quoting *Common Cause v. Rucho*, 139 S. Ct. 2484, 2521 (2019) (Kagan, J., dissenting)). The finding of partisan motive was not particularly difficult because “Legislative Defendants openly admitted that they used prior election results to draw districts to benefit Republicans in both 2011 and 2017.” *Id.* at *115. The *Common Cause* court also relied in part on expert mapping-simulation reports that

purported to show that the legislative plans were partisan outliers when compared to a baseline of innumerable maps supposedly drawn to achieve the General Assembly’s own criteria. *Id.* at *17.

The *Common Cause* court soon learned the problem with that latter reliance. The *Common Cause* court placed exceptional limits on the General Assembly’s remedial process, *id.* at *133, and the General Assembly responded with a process—conducted completely in public on live audio and video livestream—that selected districts at random from maps provided at the liability phase by one of the *Common Cause* plaintiffs’ experts (Dr. Chen), follow by subsequent minor modification. Nevertheless, the *Common Cause* plaintiffs objected, called the resulting plan an extreme partisan gerrymander, and presented an expert report of Dr. Chen purporting to show that *his own simulated districts* (with minor modifications) were partisan outliers. Ex. 3, Plaintiffs’ Objections to Remedial Plans at 14–44, *Common Cause v. Lewis*, No. 18 CVS 014001 (filed Sept. 27, 2019). The *Common Cause* court overruled the objections. Ex. 4, Order on Remedial Plans, *Common Cause v. Lewis*, No. 18 CVS 014001 (entered Oct. 28, 2019).

Plaintiffs, represented by the same lawyers, challenged the congressional plan enacted to remedy the *Shaw* violation, and the same panel that decided the *Common Cause* case issued an injunction. Ex. 5, Order on Injunctive Relief, *Harper v. Lewis*, 19 CVS 012667 (entered Oct. 28, 2019). The court, however, found a likelihood of success predicated entirely on the General Assembly’s “detailed record . . . of partisan intent and the intended partisan effects” *Id.* at 12. The court found that the General Assembly had formally permitted consideration of partisan data in the criteria and instructed the map-drawing consultant to use partisan data in constructing the districts. *Id.* at 12–13. The court *did not* rely on the expert mapping simulations in *Harper*.

The General Assembly conducted another redistricting, again in public view and without a partisan-intent criterion. Again, the *Common Cause* plaintiffs objected, presented expert mapping

simulations purporting to show that the new plan was “an extreme and obvious partisan gerrymander,” and again asked for injunctive relief. Ex. 6, Plaintiffs’ Motion to Set Schedule for Review of Remedial Plan, *Harper v. Lewis*, 19 CVS 012667 (filed Nov. 15, 2019). The panel had now seen expert simulations purporting to show that every plan the General Assembly adopted, no matter how public and no matter how close to the *Plaintiffs’* prior simulated maps, constituted an extreme partisan gerrymander. The panel had enough and rejected the challenge. Ex. 7, Order, *Harper v. Lewis*, 19 CVS 012667 (filed Dec. 2, 2019).

B. The 2021 Redistricting

1. The 2021 redistricting was uniquely difficult because of a five-month delay in the release of the census results due to the global Covid-19 pandemic. North Carolina did not receive the census data necessary to redistrict until August 12, 2021. And because that data did not come in a “ready to draw” package, it took several additional weeks for legislative staff to load data and configure software for terminals that legislators and the public could use.

The General Assembly worked promptly to redistrict all the same. Both the House Redistricting Committee the Senate Redistricting and Elections Committee had already been conducting meetings, and they adopted criteria to govern the congressional and legislative line-drawing before the census results were announced. On August 12, 2021, the House Committee on Redistricting and the Senate Committee on Redistricting and Elections met, and adopted Joint Criteria for redistricting. These criteria largely mirror traditional districting criteria, including in relevant part instructions that:

- the number of people in each congressional district be as equal as practicable under the 2021 decennial census;
- the number of people in each legislative district be within 5 percent of the ideal population under the 2021 decennial census;
- districts be contiguous;

- that voting districts (VTDs) should be split only when necessary;
- the Committees make reasonable efforts to draw compact districts;
- the Committees may consider municipal boundaries;
- the Committees may consider member residence;

Exhibit 8. To avoid violations identified in the 2010 cycle, the criteria also included the following directives:

Racial Data. Data identifying the race of individuals or voters shall not be used in the construction or consideration of districts in the 2021 Congressional, House, and Senate plans. The Committees will draw districts that comply with the Voting Rights Act.

Election Data. Partisan considerations and election results data shall not be used in the drawing of districts in the 2021 Congressional, House, and Senate plans.

Id. An additional criterion relevant to this case reads in full:

Community Consideration. So long as a plan complies with the foregoing criteria, local knowledge of the character of communities and connections between communities may be considered in the formation of legislative and congressional districts.

Id. There was no priority to the criteria. *Id.* at 56:50 *et seq.*

The General Assembly conducted public hearings across the State, beginning on September 8, 2021 and running through September 30, 2021.⁶ Legislators then began drawing

⁶ The *Harper* Plaintiffs allege that the General Assembly avoided having hearings in large urban areas, and that only three hearings occurred outside of the typical workday. This is false. Hearings were held in the State’s largest cities, including Charlotte, Winston-Salem, Fayetteville, Durham, and Wilmington. Eight hearings began at 5:00 PM or later. Hearings were also held in every one of the then 13 congressional districts. Furthermore, constituents from all over the State were free to communicate with members of both redistricting committees via email, phone, or any other method of virtual communication. This is in addition to the public access to at least one room where the general public could build their own districts, and the public portal opened for public input on redistricting that was open throughout the process. The public made use of all of these methods of providing comment.

maps, on public terminals during sessions that were recorded. All of the map-drawing occurred in this public process. After submissions and proposals by legislators and the public, additional hearings were held throughout the State on October 25 and 26, 2021, including hearings in Raleigh, Wilmington, and Greenville.

2. In early November, maps were proposed and voted on leading to the adoption of enacted plans on November 4, 2021 (the “2021 Plans”). During all Senate and House Redistricting Committee meetings, and during all full sessions of the House and Senate, Democratic members were given a meaningful opportunity to offer amendments, and comment on proposed plans. In addition, the General Assembly established a detailed record of the reasoning for the configurations of the districts. Some of the goals for the 2021 Congressional Plan are summarized here:

- CD1 is anchored in northeastern North Carolina based on testimony from a public hearing in Pasquotank that this region be maintained as a community of interest; the district was configured to take in the Outer Banks and most of the State’s shoreline and to keep the finger counties of northeastern North Carolina together, as well as most of the counties that run along the State’s border with Virginia. 2011-11-01 Senate Committee Hr’g 37:50, *et seq.*⁷

Indeed, Democratic members of the General Assembly praised the Chairs’ attempts to create a “public transparent process” to draw the maps, as well as their ability to collaborate with the Republican members to develop the scheduling of the public hearings and other public input. See 2021-11-03 House Redistricting Committee Hr’g 48:28 (available at <https://www.youtube.com/watch?v=M53S7TbN6ew>) (statement from Rep. Harrison); 2021-11-01 Senate Redistricting and Elections Committee Hr’g 1:18:02 (available at <https://www.youtube.com/watch?app=desktop&v=KgSkfFY7r7g>) (statement from Sen. Davis).

⁷ The November 1, 2021 hearing can be found at: <https://www.youtube.com/watch?v=KgSkfFY7r7g>

- CD2 was configured to contain most of rural northeastern North Carolina, to maintain whole counties (16 of 18 are whole), and to avoid splitting municipalities (none are split). *Id.* at 39:07, *et seq.*
- CD3 was configured to keep mostly rural counties in southeastern North Carolina near the coast within the same district and to improve the compactness of the prior district; extensive input from a public hearing in New Hanover was incorporated, including that Cape Fear River Basin be kept in one district, that New Hanover and Brunswick Counties be kept together, and that Bladen and Columbus Counties be maintained in a single district. *Id.* at 39:45, *et seq.*
- CD4 was configured to be a nearly perfect four-county district south of Raleigh, and these counties were chosen because they have similar geography, industry, and proximity to population base in the region in Fayetteville and Raleigh; an online comment requested that Cumberland, Harnett, and Sampson Counties be kept together in a congressional district, and this was accomplished by adding population in Johnston and one precinct in Wayne County; the district is highly compact and splits no municipalities. *Id.* at 40:42 *et seq.*
- CD5 was configured to be based entirely in Wake County, comprising Garner, Knightdale, Raleigh, Rolesville, Wake Forest, Wendell, and Zebulon; these municipalities are viewed as sharing common interests, given that people live and work and commute within these municipalities; no municipalities were split. *Id.* at 41:41 *et seq.*
- CD6 was configured to include Durham and Orange Counties and a portion of Wake County that contains Apex, Cary, and Morrisville, which were all viewed as a coherent community of interest, and to match the configuration of this district that has existed in this

region, in roughly the same form, for decades; no municipalities were split. *Id.* at 42:12 *et seq.*

- CD7 runs from the Triangle west through the Central Piedmont region encompassing Davidson, Guilford, and Harnett Counties and a portion of Wake County, the purpose being to bring together rural areas and smaller cities and towns. *Id.* at 42:51 *et seq.*
- CD8 is rooted in the Sandhill region of North Carolina including eight whole counties and a portion of Mecklenburg County; the configuration was created in part based on a comment by the Moore County Democratic Chair, who suggested that Sandhills counties including Moore, Scotland, and Hoke to be kept together in a Sandhills district. *Id.* at 43:40, *et seq.*
- CD9 constitutes the General Assembly’s effort to keep the City of Charlotte together in one district, given its cohesive community; this was not strictly possible, given that Charlotte is too large for one congressional district, but the adopted configuration succeeded in keeping 83% of Charlotte in one district that, in turn, is 97% composed of Charlotte. *Id.* at 44:25 *et seq.*
- CD10 is composed of suburban and exurban areas that stretch between the population centers of Charlotte and the Triad region, which constitute a community of interest; the district keeps all of the City of High Point, based on a comment at a public hearing in Forsyth. *Id.* at 44:47, *et seq.*
- CD11 is based in the northwest corner of North Carolina containing eight whole counties and two partial counties based on a desire to maintain the incumbent in the district; a key goal was maintaining Greensboro as much as possible in the district, and the goal was achieved with more than 90% of Greensboro included. *Id.* at 45:26 *et seq.*

- CD12 was configured to join suburbs outside Charlotte to an area in and around Winston-Salem, which was achieved by incorporating four whole counties and one partial county; no municipalities were split. *Id.* at 45:55.
- CD13 contains municipalities and towns to the west and north of Charlotte based on an online comment suggesting that towns in North Mecklenburg, including Cornelius, Huntersville, and Davidson, be joined into a single district. *Id.* at 46:22 *et seq.*
- CD14 is anchored in western North Carolina to take in the mountain counties up to the westernmost tip of the State; the General Assembly implemented a comment at a Jackson County public hearing asking that McDowell and Polk Counties be removed from the district and that it be drawn into Watauga County. *Id.* at 47:01 *et seq.*

The legislative record is filled with information regarding goals like these. Specifically, in introducing the bill that ultimately was enacted as the House and Senate plans, Sen. Hise explained in detail, on a district-by-district and sometimes a VTD-by-VTD basis, the rationale for the decisions made in drawing the map that was ultimately passed as the 2021 Senate Plan. 2021-11-02 Senate Committee Hr’g 1:01:21, *et seq.* (available at <https://www.youtube.com/watch?v=G0VerOsNMm4> (titled “2021-11-02 Committee (Senate)”). Sen. Hise explained, for example, why three New Hanover County precincts were selected for inclusion in Senate District 8, *id.* at 1:04:47, the reason for VTD splits and efforts to keep municipalities whole in Wake County, *id.* at 1:08:00 and 1:12:48, why Forsyth County was paired with Stokes County as opposed to Yadkin County, *id.* at 1:21:56, and the choices concerning the southwestern North Carolina county grouping configurations involving Cleveland, Gaston, Lincoln, Henderson, Polk, and Rutherford Counties, *id.* at 1:29:00. Similarly, while Rep. Hall did not go into detail each of 120 House districts, at the House Redistricting Committee hearing on

November 2, 2021, Rep. Hall gave an overview of the 2021 House Plan, describing how the proposed map followed the adopted criteria and the overarching goal of retaining the cores of prior districts where possible. 2021-11-02 House Committee Hr’g at 9:41:17 *et seq.* (available at <https://www.youtube.com/watch?v=7pyfVT6VOc4&t=34565s> (titled “2021-11-01 Redistricting Map Drawing (House))). Rep. Hall answered all questions from committee members as to why districts are configured as they are. The General Assembly also made available extensive data pertaining to each of the enacted plans.⁸

In addition, the legislative record shows that the Senate Committee received and adopted two amendments from Black Democratic Members, Gladys Robinson and Natalie Murdock, concerning the Durham/Chatham and Guilford/Rockingham regions. 2021 Senate Redistricting and Elections Committee Hr’g 3:45:46 *et seq.*⁹ (consideration and approval of proposed amendment to districts in Durham and Chatham counties) and 3:52:00 *et seq.* (consideration and approval of proposed amendment to districts in Guilford and Rockingham counties). Democratic members testified stated in open committee that they supported the groupings districts as amended

⁸ These are available online:

Senate : <https://webservices.ncleg.gov/ViewBillDocument/2021/53447/0/SL%202021-174%20-%20StatPack%20Report>

Congressional: <https://webservices.ncleg.gov/ViewBillDocument/2021/53447/0/SL%202021-174%20-%20StatPack%20Report>

House: <https://webservices.ncleg.gov/ViewBillDocument/2021/53428/0/SL%202021-175%20-%20StatPack%20Report>

⁹ Available at <https://www.youtube.com/watch?v=G0VerOsNMm4>

and that the amended districts had no VRA issues. *Id.* at 3:48:04 and 3:52:49. The committee adopted them, and they are in the 2021 Senate Plan.

C. The Present Lawsuits

Two sets of plaintiffs filed the two lawsuits before the Court on motions for preliminary injunctions, and they are referred to here respectively as the *NCLCV* Plaintiffs and the *Harper* Plaintiffs. Both lawsuits rely on the *Common Cause* ruling and assert partisan gerrymandering claims.¹⁰

1. The *NCLCV* Plaintiffs challenge the 2021 Congressional, House, and Senate Plans under the North Carolina Constitution’s Free Elections, Equal Protections, Free Speech, and Free Assembly Clauses. The *NCLCV* Plaintiffs allege that these plans are unlawful partisan gerrymanders because they are insufficiently proportional. Their theory is that “an electoral climate with a 50-50 split in partisan preference should produce a roughly 50-50 representational split.” Moon Affidavit § 3.1; *NCLCV* Compl. ¶¶ 3, 88, 126–131. According to the *NCLCV* Plaintiffs, the “mark[]” of a map as a “partisan gerrymander” is “that it prevents the disfavored party from receiving a majority of seats, even when that party’s candidates earn a majority of votes statewide.” *NCLCV* PI Mem. 23. Absent from the *NCLCV* Plaintiffs’ complaint and its preliminary-injunction papers is a plausible allegation that the General Assembly adopted a partisan-data criterion or otherwise announced a partisan purpose behind any of the 2021 Plans. Instead, the *NCLCV* Plaintiffs allege that, because it was *possible* for legislators to draw lines for partisan reasons, it *did* happen. *See, e.g., NCLCV* Compl. ¶¶ 69–71.

¹⁰ The *NCLCV* Plaintiffs also assert racial claims but do not move for preliminary relief on that basis.

The *NCLCV* Plaintiffs believe they can draft better maps than the General Assembly by “harnessing the power of mathematics and computer science.” *NCLCV* Compl. ¶ 1. They assert that better maps than the General Assembly’s can be created using “high-performance computers,” “cutting-edge computational methods and resources” unavailable to the General Assembly, and a set of unidentified criteria, *id.* ¶ 154. They have purported to create one map approaching “Pareto optimality” for each House of the General Assembly and the congressional delegation. *Id.* But they leave what that means to the imagination. Their preliminary-injunction motion asks the Court to enjoin the use of the 2021 Plans in the 2022 elections, including the general election. Perhaps recognizing that such an injunction would be preempted by federal law, *see* 2 U.S.C. § 7; *Foster v. Love*, 522 U.S. 67 (1997), they also ask that, if the General Assembly cannot draft and finalize maps remediating the infirmities they supposedly identify in two weeks’ time, the Court should order the State to use the *NCLCV* Plaintiffs’ map in the 2022 elections. Compl. Prayer for Relief ¶ g; PI Mem. 58–59. In short, the *NCLCV* Plaintiffs ask this Court to determine that their plans are better than the General Assembly’s and legislate their own plans into North Carolina law—at the *preliminary-injunction stage*.

2. The *Harper* Plaintiffs present a similar case predicated on *Common Cause* and its novel theory of partisan gerrymandering, but these plaintiffs challenge only the 2021 Congressional Plan, not the legislative plans. These are many of the same plaintiffs who challenged the 2019 congressional plan and whose challenge was rejected at the preliminary-injunction stage, based on a record much like the one before this Court.¹¹ Like the *NCLCV* Plaintiffs, the *Harper*

¹¹ In fact, the *Harper* Plaintiffs first attempted to bring this suit through a motion to amend their complaint in the prior *Harper* case for the purpose of keeping the same panel that decided *Common Cause*. That forum-shopping effort failed, and now they have voluntarily dismissed the prior *Harper* case.

Plaintiffs have no direct evidence that partisan motive entered the line-drawing, and, like the *NCLCV* Plaintiffs, they ask for the negative inference that partisan motive *must* have impacted lines because it cannot be proven *not* to have done so. *See, e.g.*, PI Mem. 5–8. The *Harper* Plaintiffs also rely on an expert analysis criticizing district lines and mapping simulations purporting to show that the 2021 Plans are extreme partisan outliers. The *Harper* Plaintiffs ask for a new court-drawn congressional plan to govern the 2022 election—as *preliminary relief*.

The Legal Standard

“A preliminary injunction . . . is an extraordinary measure taken by a court to *preserve the status quo* of the parties during litigation.” *Ridge Cmty. Invs., Inc. v. Berry*, 293 N.C. 688, 701, 239 S.E.2d 566, 574 (N.C. 1977) (emphasis added). It will be issued only if (1) “a plaintiff is able to show likelihood of success on the merits of his case,” (2) “a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the court, issuance is necessary for the protection of a plaintiff’s rights during the course of litigation,” and (3) a “weigh[ing] [of] the equities” supports a preliminary injunction. *Holmes v. Moore*, 270 N.C. App. 7, 15, 34 840 S.E.2d 244, 254, 265 (N.C. App. 2020) (citations omitted).

Argument

These very lawsuits stand as a testament against their own underlying legal theory. Once the *Common Cause* panel invited partisan gerrymandering lawsuits, it should have recognized that partisan interest groups would overstay that welcome. After all, plaintiffs sued the General Assembly last cycle for *every* choice it made. When it failed to prioritize partisan goals, it was sued for racial gerrymandering. When it announced partisan goals, it was sued for partisan

gerrymandering. Now that it has forbidden both racial and partisan goals—it is sued for both.¹² Under Plaintiffs’ theory, the facts simply do not matter; these cases are about political power. The 2021 redistricting was the most transparent, open, and non-partisan legislative redistricting in the history of North Carolina, if not the United States. It mirrored what the *Common Cause* court ordered the last time the General Assembly faced suit. But no amount of transparency or neutral criteria will satisfy these Plaintiffs. Until the General Assembly (or at least its current Republican majority) no longer draws the lines, the floodgates will never close. They should never have been opened. The *Common Cause* justiciability holding contravened binding precedent, and it should be rejected.

In any event, this case is not *Common Cause*. The General Assembly did not use partisan data, its criteria forbade any such use, and neither set of plaintiffs has credible evidence to the contrary. The *NCLCV* Plaintiffs disagree with the State Constitution’s delegation of authority over redistricting to the General Assembly and contend that, if a “better” plan can exist, the Constitution demands it, and it should be afforded the force of law. But that would be a baffling result: the *NCLCV* Plaintiffs’ plans enjoy no popular support, they were drawn in private quarters and in secret, and the *NCLCV* Plaintiffs have not even given a transparent account of the criteria controlling their line-drawing—much less the detailed account of line-by-line purpose the General Assembly has provided. No public hearings informed the proposed plans, and no public comment has been afforded. Yet the *NCLCV* Plaintiffs demand that this Court impose these black-box plans on 10.4 million North Carolina residents, with no questions asked—not even in discovery. Even if

¹² As noted, the *NCLCV* Plaintiffs have not sought provisional relief under their racial theories, but these theories illustrate the conundrum the State and this Court face.

“good government” were the law, the *NCLCV* Plaintiffs are on the wrong side of “good government.”

So, too, are the *Harper* Plaintiffs. Like the *NCLCV* Plaintiffs, they have no direct evidence to support their claims. Instead, they dropped piles of paper, including lengthy expert reports, on the Court and opposing parties at 3:30pm on Tuesday, November 30, less than 72 hours before their preliminary-injunction hearing and in violation of this Court’s rules. This Court should not be fooled. The expert reports have not been vetted in a fair adversarial process, they do not establish the predicates of their claims, and they provide no basis for this Court to find that the General Assembly did not follow its own criteria. The *Harper* Plaintiffs’ experts did not seek to input the General Assembly’s non-partisan goals into their algorithms, which is essential to make an even arguably fair assessment of partisan motive and intent. Instead, they rewrote their criteria in a transparent effort to rig the analysis in such a way to register any non-partisan goal not accounted for in the algorithm as partisan. And the analysis shows, on its own terms, only a muted partisan intent and effect. That is no basis to impose an undemocratic plan on 10.4 million North Carolinians.

I. Plaintiffs Are Unlikely To Succeed on the Merits

A. Plaintiffs Lack Standing

Plaintiffs are unlikely to succeed in establishing their own standing to challenge the 2021 Plans. “Only one who is in immediate danger of sustaining a direct injury from legislative action may assail the validity of such action. It is not sufficient that he has merely a general interest common to all members of the public.” *Charles Stores Co. v. Tucker*, 263 N.C. 710, 717, 140 S.E.2d 370, 375 (1965); *see also New Hanover Cty. Bd. of Educ. v. Stein*, 374 N.C. 102, 116, 840 S.E.2d 194, 204 (2020), *as modified on denial of reh’g* (May 18, 2020) (“[T]he only persons

entitled to “call into question the validity of a statute [are those] who have been injuriously affected thereby in their persons, property or constitutional rights.”). “The direct injury requirement applicable in cases involving constitutional challenges to the validity of government action is a rule of prudential self-restraint based on functional concern for assuring sufficient concrete adverseness to address difficult constitutional questions.” *Comm. to Elect Dan Forest v. Emps. Pol. Action Comm.*, 376 N.C. 558, 608, 853 S.E.2d 698, 733 (2021) (quotation marks omitted).

1. The Harper Plaintiffs

The *Harper* Plaintiffs are unlikely to establish standing, and their own presentation shows it. Because the right to vote is individual and unique to each person, and any “interest in the composition of ‘the legislature as a whole’” is “not an individual legal interest,” the U.S. Supreme Court has recognized that a voter is only directly injured by specific concerns with that voter’s districts. *Gill v. Whitford*, 138 S. Ct. 1916, 1932 (2018). A plaintiff has standing to challenge the districts in which that plaintiff lives, but cannot raise generalized grievances about redistricting plans. *See id.*; *see also United States v. Hays*, 515 U.S. 737, 745 (1995). The U.S. Supreme Court also offered parameters for assessing individualized injury. One is that a “hope of achieving a Democratic [or Republican] majority in the legislature” is not a particularized harm; the voter’s interest is in the voter’s own district, where the voter votes. *Gill*, 138 S. Ct. at 1932. Another is that a district’s partisan composition is not a cognizable injury if a similar composition would result “under any plausible circumstance.” *Id.* at 1924, 1932. A third is that injury must be proven, not merely alleged. *Id.* at 1931–32.¹³ The *Harper* Plaintiffs are unlikely to establish standing under this test.

¹³ Though not binding, U.S. Supreme Court precedent is “instructive” for interpreting North Carolina standing requirements. *Goldston v. State*, 361 N.C. 26, 35, 637 S.E.2d 876, 882 (2006). It is especially instructive here, where the case law is unanimous and directly on point.

To begin, the *Harper* Plaintiffs claim to live only in CD1, CD4, CD6, CD7, CD9, CD10, CD11, and CD14 under the 2021 plan. *Harper* PI Mot. at Ex. A, Madduri Decl., Exs. J-U. That means the *Harper* Plaintiffs have no colorable assertion of standing to challenge six of the congressional districts (CD2, CD3, CD5, CD8, CD12, and CD13).

Next, some *Harper* Plaintiffs reside in CD9 and CD6, which they allege (along with CD5 and CD12, where no *Harper* Plaintiff resides) are “packed” with Democratic voters and admit would be naturally packed in all events. *See Harper* Ex. H, at 56. According to their own evidence, these Democratic voters are able to elect their preferred candidates under the 2021 Congressional Plan and would continue to have that ability in their expert’s numerous counter-factual scenarios. These Plaintiffs have clearly not suffered any harm. *Gill*, 1916 S. Ct. at 1932.

Next, some *Harper* Plaintiffs reside in CD1, CD7, and CD10. *See Harper* Ex. H, at 56. Although these districts are heavily Republican (as are CD3, CD12, CD8, and CD13, where no *Harper* Plaintiff resides), the *Harper* Plaintiffs’ own expert’s analysis shows that this is so as a matter of natural geography; they would live in heavily Republican districts in all events. *See Harper* Ex. H, at 56. Moreover, the *Harper* Plaintiffs’ expert’s analysis shows that many districts are not partisan outliers (including CD5, CD11, CD3, CD12, CD1, CD7, CD8, and CD13). *See Harper* Ex. H, at 56. Individuals in these districts have no colorable claim to a direct injury at all.

That leaves only two districts, CD4 and CD14, where, according to their allegations, residents can plausibly claim that a different configuration might yield a different electoral result. *See Harper* Ex. H, at 56. These individuals’ claims fall short as well. For one thing, numerous possible configurations of these districts would *still* be highly favorable to Republican electoral prospects. *See id.* And, regardless, American law and democratic tradition presume that a person is represented by the person’s designated representative, regardless of descriptive similarity or

party affiliation. *See Davis v. Bandemer*, 478 U.S. 109, 132 (1986); *Whitcomb v. Chavis*, 403 U.S. 124, 149–153 (1971). It is therefore not self-evident that these Plaintiffs are injured simply in that they may be represented by a Republican after the 2022 election or in that the map places them in a district with constituents who prefer Republican candidates. Plaintiffs must demonstrate an additional individual injury from the district lines and have failed to do so.

2. The NCLCV Plaintiffs

The *NCLCV* Plaintiffs lack standing to sue to pursue a generalized interest in more Democratic Party-friendly plans, to “harness[] the power of mathematics and computer science” to advance a “new [academic] field known as ‘computational redistricting’” in redistricting lawsuits, *NCLCV* Compl. ¶ 1–2, or for any other academic or partisan pursuit. As an initial matter, the *NCLCV* Plaintiffs claim to live in CD2, CD4, CD6, CD11, CD12, and CD13, as well as Senate Districts 2, 4, 12, 20, 23, 27, 32, 37, and House Districts 6, 10, 27, 29, 56, 58, 61, 72, and 98. *NCLCV* Compl. ¶¶ 14–28. This means the *NCLCV* Plaintiffs lack standing to challenge eight congressional districts, 42 out of 50 Senate districts, and 111 out of 120 House districts. Further, the *NCLCV* Plaintiffs do not establish that their own districts would shift from being Republican-leaning to Democratic-leaning under a different configuration, or that in all election scenarios they are prevented from electing their candidate of choice. Their arguments all concern an alleged statewide injury. *See, e.g., NCLCV* PI Mem. 26–27, 33–34, 41. They also have failed to establish standing. *See Gill*, 138 S. Ct. at 1930–31.

The organizational plaintiff, the North Carolina League of Conservation Voters, Inc., fares no better. It alleges it is a “nonpartisan nonprofit advocacy organization whose mission is to protect the health and quality of life of all North Carolinians, by fighting to build a world with clean air, clean water, clean energy, and a safe climate, all protected by a just and equitable democracy.”

NCLCV Compl. ¶ 11. NCLCV claims that its membership includes “voters of all political stripes—Democrats, Republicans, and independents,” *id.* at ¶ 11 n.4, and that it engages in the electoral process to elect candidates who “share its values, to build a pro-environment majority” in North Carolina. *Id.* at ¶ 11. NCLCV has not shown how any redistricting legislation has negatively impacted its ability to advocate for its positions or to fundraise. Nor would such an assertion make sense, because redistricting legislation does not control how a private organization may speak, solicit donations, or associate with allies. Further, NCLCV has not accounted for how electing an increased number of Democrats might cause “harm” to their Republican members.

NCLCV alternatively claims to bring a claim on behalf of its members, and this too is unavailing. Under North Carolina law, an organization has standing to bring suit on behalf of its members if: “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *River Birch Assocs. v. City of Raleigh*, 326 N.C. 100, 129-30, 388 S.E.2d 538, 555 (1990). None of those elements are satisfied. To the first element, for the reasons set forth above, the *NCLCV* Plaintiffs lack standing in their own right. Indeed, NCLCV concedes that it cannot confirm that it has members in many districts. *NCLCV Compl.* at ¶ 11 n.4. As for the second element, NCLCV claims to be a nonpartisan organization with both Republicans and Democrats and that it focuses its work on environmental advocacy. That is not germane to assisting the ability of Democratic Party voters to elect Democratic Party candidates, which is the avowed purpose of this suit. To the extent it claims to pursue a “just and equitable democracy,” that is not a basis for standing. “Generally available grievance[s] about government” do not confer standing. *Gill*, 138 S. Ct. at 1923 (internal quotation omitted). And finally, the right to vote is individual and personal to each

citizen. *Id.* at 1929. NCLCV has members of all political “stripes” and cannot plausibly claim to fully understand, let alone represent, the personal political and voting preferences of its members. It is improper for an organization to assert its members’ individual right to vote.

B. The Federal Constitution Bars Plaintiffs’ Claims Against the Congressional Plan

The *Harper* Plaintiffs and *NCLCV* Plaintiffs challenge the 2021 Congressional Plan solely under the State Constitution. But the *federal* Constitution provides that the North Carolina General Assembly is responsible for establishing congressional districts. “The Framers addressed the election of Representatives to Congress in the Elections Clause.” *Rucho v. Common Cause*, 139 S. Ct. 2484, 2495 (2019). It provides that “[t]he Times, Places and Manner” of congressional elections “shall be prescribed in each State by the Legislature thereof” unless “Congress” should “make or alter such Regulations.” U.S. Const. art. I, § 4, cl. 1. The Elections Clause harbors no ambiguity; the word “Legislature” was “not one ‘of uncertain meaning when incorporated into the Constitution.’” *Smiley v. Holm*, 285 U.S. 355, 365 (1932) (quoting *Hawke v. Smith*, 253 U.S. 221, 227 (1920)). Here, it refers undisputedly to the General Assembly, not the North Carolina courts.

Thus, “[t]he only provision in the Constitution that specifically addresses” politics in congressional redistricting plans “assigns [the matter] to the political branches,” not to judges. *Rucho*, 139 S. Ct. at 2506. What’s more, the Elections Clause is the *sole* source of state authority over congressional elections; regulating elections to federal office is not an inherent state power. *Cook v. Gralike*, 531 U.S. 510, 522 (2001); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 805 (1995). Thus, for a court applying state law to have any authority to address Plaintiffs’ claims, it must derive from the Elections Clause. Any other exercise of power is *ultra vires* as a matter of federal law.

This case is in all material respects like *Carson v. Simon*, 978 F.3d 1051 (8th Cir. 2020), where the Eighth Circuit rejected a state court’s effort to alter state legislation on the ground that the state constitution required that change. In *Carson*, the Minnesota Secretary of State “agreed” with private plaintiffs “to *not* enforce the ballot receipt deadline” codified by Minnesota statute, and a “state court entered the consent decree order” against such enforcement on state constitutional grounds. *Id.* at 1056. The Eighth Circuit found that this likely violated the federal Constitution, reasoning “that the Secretary’s actions in altering the deadline for mail-in ballots likely violates the Electors Clause of Article II, Section 1 of the United States Constitution,” which, like the Elections Clause, delegates power over presidential elections to state legislatures. *Id.* at 1059. “Simply put, the Secretary has no power to override the Minnesota Legislature.” *Id.* at 1060. So too here: this Court should decline Plaintiffs’ invitation to overstep separation of powers and override the North Carolina General Assembly in setting the lines of congressional districts.

C. Plaintiffs’ Claims Are Not Justiciable

Plaintiffs’ claims also are unlikely to succeed because they are not justiciable. North Carolina courts lack jurisdiction over political questions. *See, e.g., Bacon v. Lee*, 353 N.C. 696, 716, 549 S.E.2d 840, 854 (2001); *Hoke Cnty. Bd. of Educ. v. State*, 358 N.C. 605, 639, 599 S.E.2d 365, 391 (2004). The State Constitution delegates to the General Assembly, not courts, and certainly not the Democratic Party and their agents, the power to create congressional districts. Because “a constitution cannot be in violation of itself,” *Stephenson v. Bartlett*, 355 N.C. 654, 378, 562 S.E.2d 377, 378 (2002), a delegation of a political task to a political branch of government implies a delegation of political discretion. *See id.* 371-72, 562 S.E.2d at 390.

Both sets of Plaintiffs rely on the justiciability holding of *Common Cause* for the proposition that partisan considerations in redistricting are unconstitutional. But that decision

disregarded the direct opposite conclusion of the North Carolina Supreme Court, which has made clear that “[t]he General Assembly may consider partisan advantage and incumbency protection in the application of its discretionary redistricting decisions.” *Stephenson*, 355 N.C. at 371, 562 S.E.2d at 390. To be sure, this must occur “in conformity with the State Constitution,” *id.*, but *Stephenson* was referring to the textual limitations the North Carolina Constitution imposes on redistricting, such as the whole-county rules governing legislative plans. *See id.* Although the Constitution subjects the General Assembly’s discretionary exercise of redistricting authority to a series of specific criteria—including that districts be of approximately equal population and that county lines not be unnecessarily crossed—and although the State courts have correctly asserted the prerogative to enforce these express provisions, this only emphasizes the non-justiciable nature of Plaintiffs’ claims. Just as “[t]he people of North Carolina chose to place several explicit limitations upon the General Assembly’s execution of the legislative reapportionment process,” *id.* at 389, they *could* have chosen to adopt express partisan fairness metrics that would, in turn, be judicially enforceable. The absence of the criteria Plaintiffs propose from the Constitution is proof that the State courts are not free to invent them. *See State ex rel. Martin v. Preston*, 325 N.C. 438, 461, 385 S.E.2d 473, 486 (1989) (finding express redistricting requirements in some constitutional provisions to foreclose inferring requirements in others); *Cooper v. Berger*, 371 N.C. 799, 810–11, 822 S.E.2d 286, 296 (2018) (“All power which is not expressly limited by the people in our State Constitution remains with the people, and an act of the people through their representatives in the legislature is valid unless prohibited by that Constitution.” (citation omitted)).

Beyond the textually clear restrictions on redistricting, courts in North Carolina have repeatedly refused to encroach on the power of the General Assembly. “Our North Carolina Supreme Court has observed that ‘we do not believe the political process is enhanced if the power

of the courts is consistently invoked to second-guess the General Assembly’s redistricting decisions.”” *Dickson v Rucho*, No. 11 CVS 16896, 2013 WL 3376658, at *2 (N.C. Super. Ct. July 08, 2013) (quoting *Pender County v. Bartlett*, 361 N.C. 491, 506, 649 S.E. 3d. 364, 373 (2007)). Whether or not the General Assembly’s acts are wise, “this court is not capable of controlling the exercise of power on the part of the General Assembly, . . . and it cannot assume to do so, without putting itself in antagonism as well to the General Assembly . . . and erecting a despotism of [judges], which is opposed to the fundamental principles of our government and usage of all times past.” *Howell v. Howell*, 151, N.C. 575, 66 S.E. 571, 573 (1911). Courts in other states have issued similar rulings. Just days ago, the Wisconsin Supreme Court held that “[w]hether a map is ‘fair’ to the two major political parties is quintessentially a political question.” *Johnson v. Wisconsin Elections Comm’n*, N.W.2d , 2021 WL 5578395, at *9 (Wis. Nov. 30, 2021).

Indeed, it has been settled for over 100 years in North Carolina that these claims are non-justiciable. *Howell* rejected as non-justiciable a claim that lines of a special-tax school district “were so run as to exclude certain parties opposed to the tax and include others favorable to it.” *Howell*, 151 N.C. at 575, 66 S.E. at 572. The court (1) found that an “attempt to gerrymander” the district “was successfully made,” (2) could not “refrain from condemning” that as a matter of policy, and (3) concluded that the body that adopted the lines acted erroneously in ignorance and without full knowledge that the private party that proposed the plan had intended to gerrymander the district. *Id.* at 575, 66 S.E. at 574. And yet the court *still* held that “the courts [are] powerless to interfere and aid the plaintiffs.” *Id.* “There is no principle better established than that the courts will not interfere to control the exercise of discretion on the part of any officer to whom has been legally delegated the right and duty to exercise that discretion.” *Id.* at 575, 66 S.E. at 573. This line of judicial prudence was upheld less than twenty years later in *Leonard v. Maxwell*, when the North

Carolina Supreme Court held that the “the question [of reapportionment] is a political one, and there is nothing the courts can do about it.” 216 N.C. 89, 3 S.E.2d 316, 324 (1939). This Court should follow this binding precedent and refuse to “cruise in nonjusticiable waters.” *Id.* Numerous other cases hold that the lines of legislatively created districts are not subject to judicial review. *Norfolk & S.R. Co. v. Washington Cnty.*, 154 N.C. 333, 70 S.E. 634, 635 (N.C. 1911) (holding the General Assembly’s authority to “declare and establish” the “true boundary between...counties...is a political question, and the power to so declare is vested in the General Assembly.”); *see also Carolina-Virginia Coastal Highway v. Coastal Tpk. Auth.*, 237 N.C. 52, 62 74 S.E.2d 310, 317 (1953) (“[T]he power to create or establish municipal corporations...is a political function which rests solely in the legislative branch of the government.”); *State ex rel. Tillett v. Mustian*, 243 N.C. 564, 569, 91 S.E.2d 696, 699 (1956) (“The power to create and dissolve municipal corporations, being political in character, is exclusively a legislative function.”); *Texfi Indus., Inc. v. City of Fayetteville*, 301 N.C. 1, 7, 269 S.E.2d 142, 147 (1980) (“Annexation by a municipal corporation is a political question which is within the power of the state legislature to regulate.”); *Raleigh and Gaston R.R. Co. v. Davis*, 19 N.C. (2 Dev. & Bat.) 451, 465 (1837) (“The necessity for the road between different points is a political question, and not a legal controversy; and it belongs to the legislature. So, also, does the particular line or route of the road....”).

The claims here are no different from the claim the North Carolina Supreme Court rejected in *Dickson v. Rucho*, 367 N.C. 542, 575, 766 S.E.2d 238, 260 (2014),¹⁴ under the “Good of the Whole” clause found in Article I, Section 2. The court held that an argument that plans favorable to one political party were not enacted for the “best” interests of “our State as a whole” is “not based upon a justiciable standard.” *Id.* Although styled under different provisions, Plaintiffs’

¹⁴ *Cert. granted, judgment vacated on other grounds*, 575 U.S. 959 (2015).

claims are no different in substance or in terms of justiciability. This Court is bound to follow this precedent as written. *Cannon v. Miller*, 313 N.C. 324, 324, 327 S.E.2d 888, 888 (1985) (finding lower court “acted under a misapprehension of its authority to overrule decisions of the Supreme Court of North Carolina”); *Respass v. Respass*, 232 N.C. App. 611, 625, 754 S.E.2d 691, 701 (2014). The failure of the *Common Cause* court to honor binding precedent does not excuse this Court from the same obligation.

Further, no satisfactory or manageable criteria or standards exist to adjudicate the sorts of claims Plaintiffs make. “The lack of standards by which to judge partisan fairness is obvious from even a cursory review of partisan gerrymandering jurisprudence.” *Johnson*, 2021 WL 5578395, at *9. Both sets of Plaintiffs here admit that their demand is for proportional representation, but “[t]his theory has no grounding in American or [North Carolina] law or history, and it directly conflicts with traditional redistricting criteria.” *Id.* “Even if a state’s partisan divide could be accurately ascertained, what constitutes a ‘fair’ map poses an entirely subjective question with no governing standards grounded in law.” *Id.* It is elementary that “the wisdom and expediency of the enactment is a legislative, not a judicial, decision.” *Wayne Cty. Citizens Ass’n for Better Tax Control v. Wayne Cty. Bd. of Comm’rs*, 328 N.C. 24, 29, 399 S.E.2d 311, 315 (1991) (internal quotations and citations omitted). There is no rule “that this Court can address the problem of partisan gerrymandering because it must.” *Gill*, 138 S. Ct. at 1929. It is not the role of the State courts to update the Constitution to address “existing conditions”; “[h]owever liberally [a court] may be inclined to interpret the fundamental law, [the court] [would] offend every canon of construction and transgress the limitations of [the court’s] jurisdiction to review decisions upon matters of law or legal inference [and] undert[ake] to extend the function of the court to a judicial amendment of the Constitution.” *Elliott v. Gardner*, 203 N.C. 749, 166 S.E. 918, 922 (1932).

Plaintiffs here want a constitutional amendment. Claims asserting that a districting plan is somehow harmful to democracy are “not based upon a justiciable standard.” *Dickson*, 367 N.C. at 575, 766 S.E.2d at 260. Because “[p]olitics and political considerations are inseparable from districting and apportionment,” *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973), a “partisan gerrymandering” claim could only proceed with some reliable standard for distinguishing good from bad politics. Plaintiffs cannot offer any test for discerning “at what point” politics “went too far.” *Rucho*, 139 S. Ct. at 2501. That is because this question simply asks whether a political act is wise or unwise.

Put simply, Plaintiffs’ case “is a case about group political interests, not individual legal rights.” *Gill*, 138 S. Ct. at 1933. Even if Plaintiffs think their preferences are good for democracy, courts are “not responsible for vindicating” them. *Id.* Plaintiffs complain of the political impact of district lines that will, in all events, have political consequences. But a “politically mindless approach” is not advisable, and, “in any event, it is most unlikely that the political impact of such a plan would remain undiscovered by the time it was proposed or adopted, in which event the results would be both known and, if not changed, intended.” *Gaffney*, 412 U.S. at 753. It is simply impossible in this arena to avoid political results.

The problems with maintaining judicial impartiality in the face of highly partisan redistricting lawsuits ring as true in state court as in federal court. The *Common Cause* court’s justiciability holding has been shown to open the proverbial floodgates of litigation: there has been a partisan-gerrymandering claim pending in this State at every moment since the *Common Cause* liability ruling was handed down. Continuation of this anomaly would only invite more litigation and at all levels of government. It would subject legislative will to judicial oversight and invade this discretionary sphere on a highly subjective basis. And each case would tempt the presiding

judge or judges to abandon neutral rules of law in favor of partisan preference. Vindicating a fear that legislatures might place “too much” weight on partisan considerations would pose the unquestionably unacceptable risk that judges will place *any* weight on such considerations—thereby trading partisan redistricting for partisan redistricting *litigation*. There is no reason to open this door and every reason to close it.

D. Plaintiffs’ Claims Are Not Cognizable

Justiciability aside, the rights Plaintiffs claim do not fall within the scope of the constitutional provisions they cite. All of these provisions guarantee distinct individual rights, not the group rights to partisan fairness that form the basis of Plaintiffs’ claims. The constitutional starting point is the presumption that any act of the General Assembly is constitutional. *Wayne Cnty. Citizens Ass’n for Better Tax Control*, 328 N.C. at 29, 399 S.E.2d at 315. “The Constitution is a restriction of powers and those powers not surrendered are reserved to the people to be exercised through their representatives in the General Assembly; therefore, so long as an act is not forbidden, the wisdom and expediency of the enactment is a legislative, not a judicial, decision.” *Id.* (quotation marks omitted). “A statute will not be declared unconstitutional unless this conclusion is so clear that no reasonable doubt can arise, or the statute cannot be upheld on any reasonable ground.” *Id.*; *see also Glenn v. Board of Education*, 210 N.C. 525, 187 S.E. 781, 784 (1936) (same); *Town of Boone v. State*, 369 N.C. 126, 130, 794 S.E.2d 710, 714 (2016) (same). Plaintiffs cannot meet this onerous standard.

1. *Free and Fair Elections.* Plaintiffs’ claim under the Free Elections Clause runs directly counter to that Clause’s plain text and purpose to preserve elections from the very inter-branch intermeddling Plaintiffs advocate. “The meaning [of North Carolina’s Free Elections Clause] is plain: free from interference or intimidation.” John Orth & Paul Newby, *The North*

Carolina State Constitution (“Orth”) 56 (2d ed. 2013). The Free Elections Clause simply bars any act that would deny a voter the ability to freely cast a vote or seek candidacy. *See Clark v. Meyland*, 261 N.C. 140, 142-43, 134 S.E.2d 168, 170 (1964). Plaintiffs make no assertion that any voter is prohibited from voting or faces intimidation likely to deter the exercise of this right—only that the Free Elections Clause guarantees “each major political party . . . to fairly translate its voting strength into representation.” Compl. ¶ 198. But the right to win or assistance in winning is not encompassed by this provision. *Royal v. State*, 153 N.C. App. 495, 499, 570 S.E.2d 738, 741 (2002) (ruling the free elections clause does not require public financing of campaigns). “The idea that partisan gerrymandering undermines popular sovereignty because the legislature rather than the people selects representatives is rhetorical hyperbole masked as constitutional argument. When legislatures draw districts, they in no way select who will occupy the resulting seats.” *Johnson*, 2021 WL 5578395, at *12 (citation omitted).

Reading the Free Elections Clause to contain such rights would be ahistorical and counter-productive to free elections. *See Stephenson*, 355 N.C. at 370-71, 562 S.E.2d at 389 (looking to “history of the questioned provision and its antecedents” in interpreting the State Constitution). The Free Elections Clause derives from the English Declaration of Rights of 1689, which provided that “election of members of Parliament ought to be free.” Orth 56.¹⁵ No one thought that this contained a prohibition against “partisan gerrymandering.” Elections to the English Parliament were often conducted in so-called rotten boroughs—districts far and away more gerrymandered than anything possible now because they could be created with only a handful of constituents.

¹⁵ *See also* English Bill of Rights 1689: An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown (“English Declaration of Rights”), Yale Law School: The Avalon Project, https://avalon.law.yale.edu/17th_century/england.asp (last visited Dec. 2, 2021).

Rotten boroughs were not eliminated in England until the Reform Act of 1832, so the notion that they were somehow outlawed in England in 1689 (or, in North Carolina, in 1776) is untenable. What the free-elections provision of the English Declaration of Rights *did* do was prohibit other branches of government from meddling with elections to Parliament. Put another way, the declaration that elections would be “free” vindicated separation-of-powers concerns. Going forward, Parliament controlled the “methods of proceeding” as to the “time and place of election” to Parliament. 1 William Blackstone, Commentaries 163, 177–179 (George Tucker ed., 1803); 4 E. Coke, Institutes of Laws of England 48 (Brooke, 5th ed. 1797).

What Plaintiffs want would sound eerily familiar to the English and the framers of the North Carolina Constitution. And they would recoil at it. Plaintiffs are avowed supporters of the Democratic Party and do not want “fair” elections; they want the North Carolina courts to tamper with the political composition of the 2021 Plans. This is an attack on, not a vindication of, free elections. As history shows, commitment to separation of powers preserves free elections. The Free Elections Clause does not “authorize[] this court to recast itself as a redistricting commission in order to make its own political judgment about how much representation particular political parties deserve—based on the votes of their supporters—and to rearrange the challenged districts to achieve that end.” *Johnson*, 2021 WL 5578395, at *10. The Free Elections Clause is best read to *forbid* that.

Indeed, the *NCLCV* Plaintiffs double down and argue that the Free Elections Clause promises them favorable districts regardless of whether the General Assembly redistricted with partisan intent—i.e., that the Constitution requires that the General Assembly *must affirmatively assist them in electing their preferred candidates*. *NCLCV* PI Mem. 47. They are asking for favoritism not equality. “A proportional party representation requirement would effectively force

the two dominant parties to create a ‘bipartisan’ gerrymander to ensure the ‘right’ outcome.” *Johnson*, 2021 WL 5578395, at *11. The *NCLCV* Plaintiffs do not hide from this fact; they trumpet it. The Wisconsin Supreme Court adequately addressed this absurd idea, which is the logical conclusion of the arguments of both sets of Plaintiffs:

Perhaps the easiest way to see the flaw in proportional party representation is to consider third party candidates. Constitutional law does not privilege the “major” parties; if Democrats and Republicans are entitled to proportional representation, so are numerous minor parties. If Libertarian Party candidates receive approximately five percent of the statewide vote, they will likely lose every election; no one deems this result unconstitutional. The populace that voted for Libertarians is scattered throughout the state, thereby depriving them of any real voting power as a bloc, regardless of how lines are drawn. Only meandering lines, which could be considered a gerrymander in their own right, could give the Libertarians (or any other minor party) a chance. Proportional partisan representation would require assigning each third party a “fair” share of representatives (while denying independents any allocation whatsoever), but doing so would in turn require ignoring redistricting principles explicitly codified in the Wisconsin Constitution.

Johnson, 2021 WL 5578395, at *11 (citation omitted). Predictably, the *NCLCV* Plaintiffs’ supposedly “optimized” maps do nothing to assure persons who favor third-party or non-party candidates an opportunity to elect their preferred candidates. It is a theory of major-party favoritism, and it is anathema to the Constitution.

2. *Equal Protection.* Plaintiffs’ equal-protection claim, taken on its face, fails. It is not predicated on a “classification” that “operates to the disadvantage of a suspect class or if a classification impermissibly interferes with the exercise of a fundamental right.” *Northampton Cnty. Drainage Dist. No. One v. Bailey*, 326 N.C. 742, 746 392 S.E.2d 352, 355 (1990). Membership in a political party is not a suspect classification. *See Libertarian Party of N. Carolina v. State*, 365 N.C. 41, 51-53, 707 S.E.2d 199, 206 (2011); *Libertarian Party of North Carolina v State*, No. 05 CVS 13073, 2008 WL 8105395, at *6 (N.C. Super. Ct. May 27, 2008).

While the right to vote is fundamental, political considerations in redistricting do not “impinge” that right in any way, much less to a degree warranting strict scrutiny. *Town of Beech Mountain v. Cnty. of Watauga*, 324 N.C. 409, 413, 378 S.E.2d 780, 783 (1989) (applying rational basis scrutiny when restrictions “impinge[d] to some limited extent on” the exercise of a fundamental right and expressly declining to apply strict scrutiny). There is nothing in the Enacted Plans that operates to “totally den[y] . . . the opportunity to vote.” *Dunn v. Blumstein*, 405 U.S. 330, 334–35 (1972) (cited approvingly by *Town of Beech Mountain*, 378 S.E.2d at 783). Nor is there an unequal weighting of votes as occurs when districts are of markedly unequal population or where districts have different numbers of representatives. See *Stephenson*, 355 N.C. at 378–79, 562 S.E.2d at 394 (finding unequal weighting where voters in some districts elected five representatives and voters in others elected one or two). Here, all individual votes are counted and equally weighted. Plaintiffs’ contention is that voters of each major party do not have an equal opportunity to prevail, but equal-protection principles do not protect the right to win. In fact, there “is not a fundamental right” even to have “the party of a voter’s choice appear on the ballot.” *Libertarian Party of North Carolina*, 2008 WL 8105395, at *7, *aff’d*, 365 N.C. 41, 707 S.E.2d at 199. If the law were otherwise, the *Stephenson* Court would not have endorsed “consider[ation] [of] partisan advantage and incumbency protection in the application of its discretionary redistricting decisions.” *Stephenson*, 355 N.C. at 378, 562 S.E.2d at 390. Thus, rational-basis review applies, and any plan that complies with the equal-population rule and other legal requirement is amply supported by a rational basis. The Enacted Plans clearly meet this standard.

3. *Speech and Assembly.* Plaintiffs’ free speech and association claims fare no better. North Carolina courts interpret the rights to speech and assembly in alignment with federal case law under the First Amendment. *Feltman v. City of Wilson*, 238 N.C. App. 246, 253, 767 S.E.2d

615, 620 (2014); *State v. Petersilie*, 334 N.C. 169, 184, 432 S.E.2d 832, 841 (1993); *State v. Shackelford*, 264 N.C. App. 542, 552, 825 S.E.2d 689, 696 (2019). The right to free speech is impinged when “restrictions are placed on the espousal of a particular viewpoint,” *Petersilie*, 334 N.C. at 183, 432 S.E.2d at 840, or where retaliation motivated by speech would deter a person of reasonable firmness from engaging in speech or association, *Toomer v. Garrett*, 155 N.C. App. 462, 478, 574 S.E.2d 76, 89 (2002) (explaining that the test for a retaliation claim requires a showing that “plaintiff . . . suffer[ed] an injury that would likely chill a person of ordinary firmness from continuing to engage” in a “constitutionally protected activity,” including First Amendment activities); see *Evans v. Cowan*, 132 N.C. App. 1, 11, 510 S.E.2d 170, 177 (1999). If there are no restraints on speech, then redistricting cannot fairly be characterized as retaliation.

Nothing in the Enacted Plans place “restrictions . . . on the espousal of a particular viewpoint,” *Petersilie*, 334 N.C. at 183, 432 S.E.2d at 840, or “would likely chill a person of ordinary firmness from continuing to engage” in expressive activity, *Toomer*, 155 N.C. App. At 478, 574 S.E.2d at 89. Plaintiffs “appear to desire districts drawn in a manner ensuring their political speech will find a receptive audience; however, nothing in either constitution gives rise to such a claim.” *Johnson*, 2021 WL 5578395, at *13. “Associational rights guarantee the freedom to participate in the political process; they do not guarantee a favorable outcome.” *Id.* Simply put, “there are no restrictions on speech, association, or any other First Amendment activities in the districting plans at issue. The plaintiffs are free to engage in those activities no matter what the effect of a plan may be on their district.” *Rucho*, 139 S. Ct. at 2504. People are free to speak their mind and petition the Legislature—no matter whether they affiliate with the same political party with their representative or not. And they remain free to join the Democratic Party and vote for

Democrats. What the Constitution guarantees is the right to meet up and speak up—not to be listened to. Plaintiffs present no evidence that they chose to forbear from speech or association for fear of gerrymandered districts, and no such assertion would be credible given that real gerrymandering actually took place in this State at the hands of their own Democratic Party. Indeed, taken to its logical end, Plaintiffs’ theory would lead to the absurd result that any person who did not vote for their elected representative would have a free speech and free assembly claim under North Carolina’s Free Speech and Free Assembly Clauses.

E. Plaintiffs’ Claims Are Unlikely To Succeed Under Any Theory That May Be Justiciable and Cognizable

Even if partisan gerrymandering claims were justiciable, the claims of both sets of Plaintiffs in these cases would still be unlikely to succeed because they do not satisfy any standard that may arguably apply. There can be no serious quarrel with the principle that “the power of the courts” should not be “consistently invoked to second-guess the General Assembly’s redistricting decisions.” *Pender Cnty.*, 361 N.C. at 506, 649 S.E.2d at 373. Accordingly, those jurists who have argued that partisan gerrymandering claims should be viewed as constitutionally justiciable and cognizable have opined that courts must “not use any judge-made conception of electoral fairness—either proportional representation or any other; instead, [the correct standard] takes as its baseline a State’s *own* criteria of fairness, apart from partisan gain.” *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting). The *Common Cause* decision could not have been clearer that it was *not* claiming a judicial right “to engage in policy-making by comparing the enacted maps with others that might be ‘ideally fair’ under some judicially-envisioned criteria.” 2019 WL 4569584, at *128. Rather, it believed that the judicial task is “to take the Adopted Criteria that the General Assembly itself, in its sole discretion, established, and compare the resulting maps with those criteria to see ‘how far the State had gone off that track because of its politicians’ effort to entrench themselves

in office.”” *Id.* (quoting *Rucho*, 139 S. Ct. at 2521 (Kagan, J., dissenting)). Although the plaintiffs in that case were found to have established constitutional violations under this method, Plaintiffs here do not.

1. Intent

An essential element of any cognizable constitutional partisan gerrymandering claim is discriminatory intent. *See Common Cause*, 2019 WL 4569584, at *114 (“[T]he plaintiffs challenging a districting plan must prove that state officials’ predominant purpose in drawing district lines was to entrench their party] in power by diluting the votes of citizens favoring their rival.” (quotation and edit marks omitted)). In *Common Cause*—after a full trial on the merits—the trial court found this element met based in large part on “direct evidence”: “Legislative Defendants openly admitted that they used prior election results to draw districts to benefit Republicans in both 2011 and 2017.” *Id.* at *115. This case is different. The General Assembly adopted a criterion rejecting the use of political data in redistricting, and the line-drawing process was conducted in public, amounting to the most transparent legislative redistricting in United States history.

Neither set of Plaintiffs identifies direct evidence that contradicts the General Assembly’s own assertions of its intent. That omission alone should be sufficient to reject Plaintiffs’ claims. “The good faith of [public] officers is presumed and the burden is upon the complainant to show the intentional, purposeful discrimination upon which he relies.” *S.S. Kresge Co. v. Davis*, 277 N.C. 654, 662, 178 S.E.2d 382, 386 (1971). This Court at this preliminary, highly expedited stage is in no position to discredit a co-equal branch of government, and neither set of Plaintiffs provides a basis for such an exceptional ruling. Instead, both sets rely on indirect evidence that was belatedly

dumped on the Court, which has not been vetted in an appropriate adversarial proceeding, and which fails on its face.

a. The *NCLCV* Plaintiffs attempt to shift the burden, contending that it is *possible* that legislators utilized political data or relied on personal knowledge of political demographics. *See, e.g., NCLCV* Compl. ¶¶ 69–71. But *possibility* does not equal a showing of likelihood of success in *proving* this occurred. It is “the plaintiffs” who “*must prove* that state officials’ predominant purpose . . . was to entrench their party in power.” *Common Cause*, 2019 WL 4569584, at *114 (quotation and edit marks omitted) (emphasis added). They also contend that the General Assembly’s criteria permitted partisan considerations because the criteria permitted legislators to use their “local knowledge” in drawing districts, but the criteria expressly permitted this only “[s]o long as a plan complies with the foregoing criteria,” including the *express bar* on partisan considerations. Exhibit 8. So, the criterion means exactly the opposite of what the *NCLCV* Plaintiffs say.

The *NCLCV* Plaintiffs also contend that discriminatory intent may be inferred from the alleged fact that statewide election results, when transposed onto the 2021 Plans, “translate[] competitive elections, including elections with statewide Democratic victories, into Republican candidates winning at least 10 of 14 seats.” *NCLCV* Compl. ¶ 91; *see also id.* ¶ 101 (similar assertion regarding 2021 Senate Plan); *id.* ¶ 114 (similar assertion regarding 2021 House Plan). But that is unremarkable when the North Carolina Constitution does not utilize proportional representation. Democratic and Republican constituents are not evenly divided in the State; the Democratic Party appeals to concentrated groups of voters in urban areas, and the Republican Party has broader geographic appeal. 2021-11-01 Senate Committee Hr’g 55:08; Ex. 9, Affidavit

of Sean Trende ¶¶ 30–32 & Exs. 2-A & 2-B.¹⁶ As a result, any number of plans, drawn without legally cognizable discriminatory intent, will reveal a natural geographic advantage for the Republican Party. The Democratic Party’s recourse is to tailor its message to a similarly dispersed population, not to seek a court injunction. Plaintiffs’ assertion says nothing of discriminatory intent, only of the *NCLCV* Plaintiffs’ “desire for proportional representation,” *Rucho*, 139 S. Ct. at 2499, which was rejected out of hand as not a legally cognizable claim in *Common Cause*, see 2019 WL 4569584, at *100 (“Plaintiffs do not seek proportional representation.”). Indeed, *Common Cause* recognized that non-partisan computer simulations would yield “scenarios where Democrats would win 50% of the statewide vote but less than 50% of the seats in either chamber.” *Id.*

The *NCLCV* Plaintiffs resort to extensive line-by-line criticisms of districts in the 2021 Plans. See, e.g., *NCLCV* Compl. ¶¶ 93–99. But the *NCLCV* Plaintiffs make no effort to assess whether those lines may be the result of “the Adopted Criteria that the General Assembly itself, in its sole discretion, established.” *Common Cause*, 2019 WL 4569584, at *128. As shown above, in public hearings the General Assembly presented detailed explanations for district configurations across plans, yet neither set of Plaintiffs addresses that explanation. They instead rely on speculation about the purpose and effect of lines, but this speculation has no foundation in the legislative record and cannot substitute for the legislative record that exists. They are not likely to succeed in showing that post hoc guesswork, rather than the General Assembly’s own explanation for lines, is accurate. At base, the *NCLCV* Plaintiffs simply opine that—using “the power of mathematics and computer science,” Compl. ¶ 1—they can think of better ways to redistrict. To that end, they present three maps drawn with unknown criteria, which they present as “Optimized”

¹⁶ This recording can be found at: <https://www.youtube.com/watch?v=KgSkfFY7r7g>

plans. This Court, unlike the court in *Common Cause*, is transparently “called upon to engage in policy-making by comparing the enacted maps with others that might be ‘ideally fair’ under some judicially-envisioned criteria.” *Common Cause*, 2019 WL 4569584, at *128. It should reject that overture.

b. The *Harper* Plaintiffs fare no better. As an initial matter their presentation is profoundly prejudicial because it consists of a 50-page brief and hundreds of pages of exhibits, including lengthy expert reports, served on Legislative Defendants on Tuesday, November 30, after 3:30 pm. This was after the deadline for their filing, N.C. R. Civ. P. 6(d), and Legislative Defendants did not have adequate time to examine, vet, and prepare rebuttals to this lengthy presentation. The adversarial process cannot function properly to disclose the truth when one side is so thoroughly hamstrung in its response. There is no basis for the Court to make election decisions impacting 10.4 million residents without properly vetting the validity and bases of this showing. The motion should be denied on that basis alone.

Regardless, the *Harper* Plaintiffs fail to establish a likelihood of success. Like the *NCLCV* Plaintiffs, they open by opining that a “closely divided state[]” should have closely divided legislative bodies, PI Mem. 5, an overt appeal to proportional representation. They also ask for a negative-inference presumption against the General Assembly, that because it was possible for partisan considerations to enter the process, they *did*—and to a legally cognizable extent. *Id.* at 5–8.¹⁷ That is a far cry from *Common Cause*, where “Legislative Defendants openly admitted that

¹⁷ The *Harper* Plaintiffs take remarkable license with the facts, interpreting Chairman Hall’s statement that he “can’t speak” to whether “other members of this committee” reviewed maps by consultants as his “tacitly acknowledge[ing] that legislators had already been presented with maps drawn by outside political consultants.” PI Mem. 7–8 (citation omitted). In turn, Plaintiffs later refer to this already stretched assertion by stretching it further: “Legislative Defendants allowed legislators to sit down at those terminals and simply copy maps drawn by outside political consultants using prohibited political data.” *Id.* at 35. That statement is unsupported, to put it

they used prior election results” 2019 WL 4569584, at *115. The *Harper* Plaintiffs supply no basis for the Court to disregard the legislators’ assertion that partisan considerations did not enter the process. Like the *NCLCV* Plaintiffs, the *Harper* Plaintiffs engage in extensive criticism of district lines, *see, e.g.* PI Mem. 8–14, with no analysis of the General Assembly’s criteria or stated purposes for those lines.¹⁸ They think they could do better than the General Assembly, but that is legally irrelevant. *Common Cause*, 2019 WL 4569584, at *128. Grasping at straws and confirming the obvious incentive Democrats had not to vote for the plans, the *Harper* Plaintiffs also opine that “the gerrymandered nature of the 2021 Plan is reflected in the fact that it was approved on strict party-line votes.” PI Mem. 35. If that theory held currency, a minority party could obtain an automatic judicial veto of any legislation simply by voting against it, leading to absurd lawsuits and chaos.

The *Harper* Plaintiffs also rely on expert mapping simulations, which purport “to determine the extent to which a map-drawer’s subordination of nonpartisan districting criteria, such as geographic compactness and preserving political subdivision boundaries, was motivated by partisan goals.” PI Mem. 25. But these exercises produce meaningful results (if at all) only where they were “generated in accordance with” the General Assembly’s non-partisan criteria. *Id.* at 26. None of the mapping exercises matched the General Assembly’s non-partisan goals. As outlined in detail above, the General Assembly announced its non-partisan goals for each district,

charitably. The drawing room terminals were broadcast live and archived on the General Assembly’s website. If Plaintiffs had evidence of this sort of maneuvering, they had every opportunity to present it to the Court.

¹⁸ The Cooper expert report lacks the rigor necessary to qualify as admissible or credible expert opinion. The report walks through district lines *ad hoc* displaying confirmation bias, i.e., narrating the alleged purpose behind lines that support a pre-conceived narrative. There is no comprehensive catalogue of work or consistently applied methodology. The opinion is not “the product of reliable principles and methods.” *State v. McGrady*, 368 N.C. 880, 892, 787 S.E.2d 1, 10 (2016).

including, for example, that CD1 take in the outer banks and most of the State’s shoreline and keep the finger counties of northeastern North Carolina together, that CD4 combine counties south of Raleigh with similar interests, and that CD11 maintain the incumbent in the district. As the *Common Cause* court explained, “the plaintiff must show that the redistricting body intended to apply partisan classifications or deprive citizens of the right to vote on equal terms in an invidious manner or in a way unrelated to any legitimate legislative objective,” and legitimate objectives include “maintain[ing] communities of interest” and “avoid[ing] the pairing of incumbents.” 2019 WL 4569584, at *114 (quotation marks omitted). “[A] plaintiff in a partisan gerrymandering case cannot satisfy the discriminatory intent requirement simply by proving that the redistricting body intended to rely on political data or to take into account political or partisan considerations.” *Id.* Without accounting for the General Assembly’s own non-partisan goals, the *Harper* Plaintiffs’ experts cannot show that partisan intent is causing the supposed partisan effect—or that partisan intent even exists.

Importantly, it is readily apparent, even from a cursory review of the *Harper* Plaintiffs’ experts’ work, that they have overtly misapplied the criteria. Dr. Chen, for example, programed his algorithm to give municipal boundaries “lower priority” than other criteria. *Harper* Plaintiffs’ Ex. H, at 8. Dr. Pegden, meanwhile, did not program his algorithm to avoid splitting municipalities—or to adhere to the General Assembly’s criteria at all—but rather picked three criteria: “preserve districting criteria such as population deviation, compactness, and splitting of counties.” *Harper* Plaintiffs’ Ex. I, at 1. But, as shown, the legislative record establishes that keeping municipalities whole was a priority, as again and again, the General Assembly sought and achieved configurations that split no municipalities. Indeed, the contemporaneous legislative record that the entire 2021 Congressional Plan split only *two* municipalities. 2011-11-01 Senate

Committee Hr’g 55:08 *et seq.*¹⁹ Further, as detailed above, the legislative history shows the retaining district cores was a priority, but the experts’ algorithms give this criterion no weight. And, as also shown above, the legislative history shows that criteria were not formally ranked, yet Dr. Chen’s algorithm was programed to rank criteria in a manner Dr. Chen chose in *his* discretion. All Plaintiffs’ experts’ algorithms show is that different criteria can lead to different results—nothing more. *Compare Harper* Plaintiffs’ Ex. I, at 2 (stating that Dr. Pegden’s method relies on “the districting criteria I consider” (emphasis added)) *with Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting) (opining that a proper analysis “takes as its baseline a State’s *own* criteria”).

Finally, even a cursory review of the *Harper* Plaintiffs’ showing undercuts their likelihood of showing partisan intent. As noted above, their expert’s report shows that more districts fall within the range of completely non-partisan maps than falls outside the range. *See Harper* Ex. H, at 56 (showing that CD5, CD11, CD3, CD12, CD1, CD7, CD8, and CD13 have the same partisan configuration as simulated maps drawn with no partisan intent). To prevail in showing discriminatory intent without any direct evidence, a plaintiff must “show a clear pattern, unexplainable on grounds other than” unlawful intent. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). The *Harper* Plaintiffs’ have not made this showing.

2. Effect

Another essential element of any arguably cognizable partisan gerrymandering claim is discriminatory effect. *Common Cause*, 2019 WL 4569584, at *116 (“Plaintiffs must also establish that the enacted legislative districts actually had the effect of discriminating against—or subordinating— voters who support candidates of the Democratic Party”). Neither set of Plaintiffs is likely to establish this element at trial.

¹⁹ See <https://www.youtube.com/watch?v=KgSkfFY7r7g>

a. The Court can make quick work of the *NCLCV* Plaintiffs’ likelihood of success on this element, because their case is predicated solely on their “desire for proportional representation.” *Rucho*, 139 S. Ct. at 2499. They provide two benchmarks for measuring effect, and both assume proportionality. First, they allege that transposing statewide election results in a close race should yield the same result in a lawfully drawn legislative or congressional plan. *NCLCV* Compl. ¶¶ 91, 101, 114. Stated differently, any departure from proportional representation constitutes an unlawful effect, in their view. No serious jurist agrees. *See Rucho*, 139 S. Ct. at 2509 (Kagan, J, dissenting) (stating that legitimate “standards . . . do not require—indeed, they do not permit—courts to rely on their own ideas of electoral fairness, whether proportional representation or any other”). Second, the *NCLCV* Plaintiffs posit that “optimized” maps can be drawn to achieve an “almost evenly divided” delegation or body. *NCLCV* Compl. ¶¶ 161; *see also id.* ¶¶ 166, 174. This, too, simply asks the Court “to rely on [its own] ideas of electoral fairness,” not on a cognizable legal standard. *Rucho*, 139 S. Ct. at 2509 (Kagan, J., dissenting). The Court should decline the invitation “to engage in policy-making by comparing the enacted maps with others that might be ‘ideally fair’ under some judicially-envisioned criteria.” *Common Cause*, 2019 WL 4569584, at *128. In all events, *NCLCV* Plaintiffs and “the power of mathematics and computer science” cannot change the simple fact that redistricting in North Carolina (and every other state) is an inherently geographic exercise, and Republicans in North Carolina hold a geographic advantage in having more voters spread out around the State. *See* Ex. 9, Affidavit of Sean Trende ¶¶ 30–32 & Exs. 2-A & 2-B.

b. The *Harper* Plaintiffs are also not likely to establish a legally significant partisan effect. As discussed above, the *Harper* Plaintiffs rely on mapping-simulation exercises that do not correctly account for the General Assembly’s non-partisan considerations. Just as those exercises

are not capable of showing intent, they are not capable of showing effect because they did not account for the General Assembly’s “chosen districting criteria.” *Rucho*, 139 S. Ct. at 2520. And, because many districts fall within the same partisan electoral effect as non-partisan simulated maps, the *Harper* Plaintiffs are unlikely to establish an improper partisan effect.

II. The Equitable Factors Cut Decisively Against a Preliminary Injunction

Equitable considerations alone defeat the provisional relief requested by both sets of plaintiffs. “A preliminary injunction is “an extraordinary remedy and will not be lightly granted.” *Travenol Labs., Inc. v. Turner*, 30 N.C. App. 686, 692, 228 S.E.2d 478, 483 (1976). The Court is obligated to “engage in a balancing process, weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted.” *Williams v. Greene*, 36 N.C. App. 80, 86, 243 S.E.2d 156, 160 (N.C. App. 1978). This means both that a movant must establish irreparable harm, *Triangle Leasing Co., Inc. v. McMahon*, 327 N.C. 224, 227, 393 S.E.2d 854, 856 (1990), and that “the harm alleged by the plaintiff must satisfy a standard of relative substantiality as well as irreparability.” *Williams*, 243 S.E.2d at 160, 36 N.C. App. at 86. And Plaintiffs bear an even heavier burden than do most, because they challenge an Act of the General Assembly. *See Fox v. Board of Commissioners*, 244 N.C. 497, 500-01, 94, S.E.2d 482, 485 (1956) (the constitutionality of an act of the General Assembly may not be enjoined “unless it is alleged and shown by plaintiffs that such enforcement will cause them to suffer personal, direct and irreparable injury.”); *see also Plemmer v. Matthewson*, 281 N.C. 722, 726, 190 S.E.2d 204, 207 (1972).

Here, the balance of equities is no contest. As explained above, the Plaintiffs have, at best, a difficult path to establishing a sufficient injury even to confer standing. *See* § I.A, *supra*. Denying them provisional relief is unlikely to cause them any harm at all, let alone a *substantial* and

irreparable harm, *Williams*, 243 S.E.2d at 160, 36 N.C. App. at 86. On the other hand, the harm to the State, the General Assembly, and the general public is difficult to overstate. The 2021 Plans were enacted through a democratic process, in full public view, by the peoples’ elected representatives. Plaintiffs want that plan replaced either in a highly expedited and truncated process without sufficient time for public input or—more likely—by a remedial plan drawn behind closed doors according to an undisclosed set of criteria.²⁰ No public comments informed either the simulated or supposedly “optimized” plans, no elected representative has sponsored them, and there is zero transparency concerning their configurations. For all the Court knows, partisan intent predominated. The Court is asked to jettison work of the most transparent and non-partisan legislative redistricting in history to engraft Plaintiffs and their counsel and experts as a fourth branch of North Carolina government. To say this is unfair and undemocratic does not begin to describe the constitutional insult an injunction would impose. Fortunately, no principle of law or equity supports this request.

1. *Status Quo*. Plaintiffs demand that this Court enjoin the lawfully enacted 2021 plans, order an expedited remedial process, and in the case of the NCLCV Plaintiffs, adopt their preferred “optimized” plans. *Harper* PI Mot 1; *NCLCV* PI Mot. 1–2, ¶ 4. They also ask the Court to move the March 2020 primary schedule. *Harper* PI Mot. at 49; *NCLCV* PI Mot. at 3, ¶ 7(c). But this requested relief alters the *status quo* and is unavailable as a matter of law. A preliminary injunction is an “extraordinary measure taken by a court to *preserve the status quo* of the parties during litigation.” *A.E.P. Indus.*, 308 N.C. at 401, 302 S.E.2d at 759 (quoting *Investors, Inc. v.*

²⁰ Under N.C.G.S. § 120-2.4, the Court must first afford the General Assembly the opportunity to enact remedial districts before engaging in judicial districting.

Berry, 293 N.C. 688, 701, 239 S.E.2d 566, 574 (1977)) (emphasis added).²¹ The status quo in this case is a primary schedule established by law and a set of plans duly adopted by the General Assembly.

Binding precedent bars Plaintiffs’ request to depart from that status quo. In *Carroll v. Warrenton Tobacco Bd. of Trade, Inc.*, 259 N.C. 692, 696, 131 S.E.2d 483, 486 (1963), the North Carolina Supreme Court held that movants “asserting rights they have not previously exercised” were “not seeking to preserve the status quo” and were categorically barred from preliminary relief. *See also Seaboard Air Line R. Co. v. A. Coast Line R. Co.*, 287 N.C. 88, 96, 74 S.E.2d 430, 436 (1953) (reversing a preliminary injunction because it was “not to restore what has been unlawfully changed, but to create a new condition not theretofore existing; not to prevent a wrong but to obtain opportunity to exercise a right; not to prevent a disruption of existing service, but to create a new service.”); *Kinston Tobacco Bd. of Trade v. Liggett & Myers Tobacco Co.*, 235 N.C. 737, 740, 71 S.E.2d 21, 23–24 (N.C. 1952) (same). This case is no different. The rights asserted are ones Plaintiffs have “never exercised,” since they have never voted under a redistricting plan that satisfies their notion of a lawful plan.²²

2. *Harm to the State and the Public.* The harm to voters and the public from the requested provisional injunctions would be severe and irreparable. To begin, “any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a

²¹ The *NCLCV* Plaintiffs miss this point in asserting that they may obtain a mandatory injunction. *See NCLCV PI Mem.* 13 n.8. Even a mandatory injunction must be tailored to “*restore* a status quo.” *Automobile Dealer Resources Inc. v. Occidental Life Ins. Co. of N.C.*, 15 N.C. App. 634, 639, 190 S.E.2d 729, 732 (N.C. App. 1972) (emphasis added).

²² The panel in the first *Harper* case avoided this problem only by a peculiar legal fiction that the *status quo* in that case was the time when the 2016 congressional plan was invalidated in federal court and, hence, “no lawful congressional district map for North Carolina existed.” Ex. 5, *Harper PI Order* at 12.

form of irreparable injury.” *Maryland v. King*, 567 U.S.1301, 1303 (2012) (internal quotations and citations omitted). This is even truer for statutes relating to elections because “[a] State indisputably has a compelling interest in preserving the integrity of its election process.” *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989). This alone is a good reason not to enjoin the duly enacted 2021 redistricting plans before even resolving these lawsuits fully upon the merits after a proper opportunity to develop a record.

Another reason to not issue an injunction is that the injunction will cause significant disruption, confusion, and uncertainty into the State’s election processes—an election process already on a tightened timeframe due to the census delay this year. Those concerns are so significant that courts do not automatically intrude into upcoming elections *even* when there has been a final judgment on the merits. *See, e.g., Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 918 (9th Cir. 2003) (“The decision to enjoin an impending election is so serious that the Supreme Court has allowed elections to go forward even in the face of an undisputed constitutional violation.”); *Chisom v. Roemer*, 853 F.2d 1186, 1189 (5th Cir. 1988) (same). Even good-intentioned judicial reforms of election laws can be counter-productive, since the intrusion itself causes harm. Any action must occur “at a time sufficiently early to permit the holding of elections...without great difficulty” or else *no* action should occur. *Reynolds v. Sims*, 377 U.S. 533, 586 (1964). That is true both under federal law (which governs congressional elections) and North Carolina law.

North Carolina courts recognize and apply this concept in redistricting litigation, and rightfully so. In *Pender County v. Bartlett*, 361 N.C. 491, 649 S.E.2d 364 (2007), the North Carolina Supreme Court affirmed a lower court final judgment striking down the state legislative plan in its decision (issued August 2007), but *stayed* the remedial phase until *after* the 2008

elections to “to minimize disruption to the ongoing election cycle” *Id.* at 510, 649 S.E.2d at 376. Likewise, in *Dickson v Rucho*, No. 11 CVS 16896, 2012 WL 7475634 (N.C. Super. Jan. 20, 2012), the court applied *Pender County* and denied a preliminary-injunction motion filed in early November of 2011 because of “the proximity of the forthcoming election cycle and the mechanics and complexities of state and federal election law.” *Id.* at *1. The panel emphasized that its ruling did not imply “a lack of merit” and said that the plaintiffs “raised serious issues and arguments” in challenging the plan. *Id.* Still, that was insufficient to warrant an injunction because of the difficulties involved in administering elections and also because the short time frame “leaves little time for meaningful appellate review” or “curative measures by the General Assembly.” *Id.* That analysis flows from the fundamental point that last-minute changes in election procedure harm election administration, which itself burdens the right to vote. *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (outlining factors courts should weigh when deciding to enjoin an impending election). The Court in *Dickson* reached this decision 25 days prior to the opening of the filing period, and approximately four months prior to the primary. If such a time frame was too short to disturb the election framework in *Dickson*, the three days prior to the opening of the filing period and three months before the March 2022 primaries is clearly too short as well.

Federal courts—where status quo-altering preliminary injunctions occasionally are allowed—are similarly reluctant to grant such extraordinary relief, reasoning that “the harm to the public in delaying either the primary or the general election or even changing the rules as they now stand substantially outweighs the likely benefit to the plaintiffs” *Diaz v. Silver*, 932 F. Supp. 462, 468 (E.D.N.Y. 1996). Such cases recognize that courts “must balance the need to protect voting rights that may be affected by the [challenged] plans with the need to avoid the adverse effect on voting rights that comes with delay and confusion” – that by ramming through a remedial

plan immediately, “the shifting district and precinct lines would leave candidates in limbo, voters confused, and election officials with the burden of implementing new maps in a timely manner with very limited resources.” *Perez v. Texas*, No. 11-CA-360, 2015 WL 6829596, *4 (W.D. Tex. Nov. 6, 2015). Other federal cases are in accord. *See, e.g., Kostick v. Nago*, 878 F. Supp. 2d 1124, 1147 (D. Haw. 2012) (“spawning chaos rather than confidence in the election process is a result we cannot endorse”); *Cardona v. Oakland Unified Sch. Dist., California*, 785 F. Supp. 837, 840 (N.D. Cal. 1992) (denying preliminary injunctive relief in redistricting case); *Shapiro v. Berger*, 328 F. Supp. 2d 496, 501 (S.D.N.Y. 2004) (same); *Watkins v. Mabus*, 771 F. Supp. 789, 805 (S.D. Miss. 1991), *aff’d in part and vacated in part as moot*, 502 U.S. 954 (1991) (even if the possibility of corrective relief under a districting plan at a later date exists, does not merit a preliminary injunction); *MacGovern v. Connolly*, 637 F. Supp. 111, 116 (D. Mass. 1986) (denying a preliminary injunction because when “disruption to the political process...is weighed against the harm to plaintiffs of suffering through one more election based on an allegedly invalid districting scheme, equity requires that we deny relief.”); *Pileggi v. Aichele*, 843 F. Supp. 2d 584, 596 (E.D. Pa. 2012) (taking it as a given that a redistricting plan could not be *created* and *imposed* at the preliminary-injunction stage and thus observed that preliminary injunction could take only the form of delaying an election).

This is in line with numerous other cases finding belated requests for relief too late to impact an upcoming election. *See, e.g., Md. Citizens for a Representative Gen. Assembly v. Governor of Md.*, 429 F.2d 606, 609 (4th Cir. 1970) (thirteen weeks prior to candidate filing deadline held too late); *Dean v. Leake*, 550 F. Supp. 2d 594, 606 (E.D.N.C. 2008) (four months prior to election too late); *Klahr v. Williams*, 313 F. Supp. 148, 152 (D. Ariz. 1970), *aff’d sub nom. Ely v. Klahr*, 403 U.S. 108 (1971) (five months out from election too late); *Kilgarlin v. Martin*,

252 F. Supp. 404, 444 (S.D. Tex. 1966), *aff'd in relevant part sub nom. Kilgarlin v. Hill*, 386 U.S. 120 (1967) (ten months too late).

Simply stated, the injunctive relief Plaintiffs seek would cause disruption on a massive scale. Voters, political parties, and candidates have been spending the past 30 days—since final passage of the plans on November 4, 2021—learning the new districts, recruiting supporters, aligning with candidates, and getting ready for the primaries. Disturbing those settled expectations and upending the State’s political processes through a rushed process creates exactly the confusion and chaos disapproved in cases like *Pender County*, *Dickson*, *Perez*, and *Kostick*. The Court would also have to afford the General Assembly “a period of time to remedy any defects identified by the court in its findings of fact and conclusions of law.” N.C. Gen. Stat. Ann. § 120-2.4. If the General Assembly were unsuccessful, the Court would be required to conduct a *provisional* remedial process—which might ultimately prove unnecessary—requiring the appointment of a special master, objections to that appointment, proposals and a report by the special master, litigation over that report, and another hearing on the plan. There is no way to accomplish that in the necessarily careful and deliberative manner that will be required to protect the public’s right to vote—much less to afford objecting parties the opportunity to seek redress and comply with all election law deadlines ahead of the 2022 election.

3. *Non-Harm to Plaintiffs.* Comparatively, Plaintiffs have not demonstrated the type of harm necessary to warrant the drastic injunctive relief they seek. They allege they live in districts that, based on various metrics and analyses performed by Plaintiffs’ experts, have been politically gerrymandered such that it is either too easy for them to elect their candidates of choice (packed districts) or too hard (cracked districts). But, as discussed above, they ask for districts where they do not reside to be invalidated, many districts would not likely be meaningfully different in a

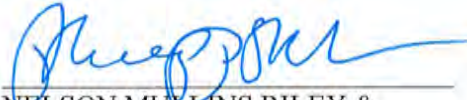
partisan sense in a computer-simulated plan—even *under their own analysis*—and the injury they claim is, in all events, abstract. Neither set of Plaintiffs has alleged or shown that they are unable to obtain representation in Congress or the General Assembly by whomever will ultimately represent them. As explained, there is a legal and historical presumption that a person is represented by the elected representative for the person’s district—even if the person did not vote for that representative. *See, e.g., Bandemer*, 478 U.S.at 132.

Injuries far more serious than those Plaintiffs alleged in their preliminary-injunction motions have been rejected by courts as a basis to hastily grant injunctive relief. *See, e.g., Vera v. Richards*, 861 F. Supp. 1304, 1351 (S.D. Tex. 1994), *aff’d Bush v. Vera*, 517 U.S. 952 (1996) (declining to issue relief, even after finding egregious racial gerrymanders, either for the 1994 or 1996 elections, even though the violation was finally adjudicated in September 1994); *Ashe v. Bd. of Elections in the City of N.Y.*, 1988 WL 68721 (E.D.N.Y. June 8, 1988) (denying preliminary injunction even after finding a likelihood of success on a Voting Rights Act violation due to proximity to election). The purported harm of living in alleged unconstitutional districts does not outweigh the enormous practical impact of the demanded injunction.

CONCLUSION

The motions should be denied.

Respectfully submitted this the 2nd day of December, 2021.



NELSON MULLINS RILEY &
SCARBOROUGH LLP

Phillip J. Strach (NC Bar No. 29456)

phillip.strach@nelsonmullins.com

Thomas A. Farr (NC Bar No. 10871)

tom.farr@nelsonmullins.com

Alyssa M. Riggins (NC Bar No. 52366)

alyssa.riggins@nelsonmullins.com

4140 Parklake Avenue, Suite 200

Raleigh, NC 27612

Telephone: (919) 329-3800

BAKER HOSTETLER LLP

Mark E. Braden* (DC Bar No. 419915)

MBraden@bakerlaw.com

Katherine McKnight* (VA Bar No. 81482)

kmcknight@bakerlaw.com

1050 Connecticut Ave NW

Suite 1100

Washington DC 20036

* Pro Hac Vice Motions Pending

CERTIFICATE OF SERVICE

It is hereby certified that on this the 2nd day of December, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com
*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Marc E. Elias
Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
MElias@elias.law
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
*Counsel for Plaintiffs Rebecca Harper, et
al.*

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
*Counsel for the North Carolina State Board
of Elections; Damon Circosta, Stella
Anderson, Jeff Carmon III, Stacy Eggers IV,
and Tommy Tucker, in their official
capacities with the State Board of Elections*

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

NELSON MULLINS RILEY & SCARBOROUGH LLP



Phillip J. Strach, NCSB #29456
4140 Parklake Avenue, Suite 200
Raleigh, North Carolina 27612
Telephone: (919) 329-3800
Facsimile: (919) 329-3799
Attorneys for Legislative Defendants

Exhibit 1

Erika Churchill

March 20, 2012

Margaret Dickson, et al. v. Robert Rucho, et al.

11 CVS 16896 & 16940

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
COUNTY OF WAKE 11 CVS 16896
11 CVS 16940

MARGARET DICKSON, et al.,)
)
Plaintiffs,)
vs.)
ROBERT RUCHO, in his)
official capacity only as)
the Chairman of the North)
Carolina Senate)
Redistricting Committee,)
et al.,)

)
Defendants.)

)
NORTH CAROLINA STATE)
CONFERENCE OF BRANCHES OF)
THE NAACP, et al.,)

)
Plaintiffs,)

vs.)
STATE OF NORTH CAROLINA,)
et al.,)

)
Defendants.)
)

DEPOSITION OF ERIKA CHURCHILL

9:39 A.M.

TUESDAY, MARCH 20, 2012

POYNER SPRUILL
301 FAYETTEVILLE STREET
SUITE 1900
RALEIGH, NC 27601

By: Denise Myers Byrd, CSR 8340, RPR

5813 Shawood Drive VIVIAN TILLEY & ASSOCIATES
Raleigh, NC 27609 ctrptr4u@aol.com

tel: 919.847.5787
fax: 919.847.2265

Page 3

1	INDEX OF EXAMINATION	
2		Page
3	By Mr. Speas.....	11
4		150
5	By Ms. Earls.....	160
6		117
7	By Mr. Peters.....	162
8		152
9	By Mr. Farr.....	154

--oOo--

10			
11			
12	INDEX OF EXHIBITS		
13	EXHIBIT NO.	DESCRIPTION	Page
14	44	Letter to Representative Lewis from O. Walker Reagan, February 16, 2011	22
15	45	E-mail to Sen. Bob Rucho and Rep. David Lewis from Erika Churchill, February 3, 2011, with attached Draft Guide - Rucho	25
16	46	2011 Legislator's Guide to NC Legislative and Congressional Redistricting	27
17	47	GS 163-132.1B	32
18	48	Rucho Senate VRA Districts, Rucho Senate 1, Rucho Senate 2, Senate Fair and Legal, Possible Senate Districts, SCSJ Senate	41
19			
20			
21			
22			
23			
24			
25			

Erika Churchill
Margaret Dickson, et al. v. Robert Rucho, et al.

March 20, 2012
11 CVS 16896 & 16940

Page 17

1 Ballance and Steve Metcalf.

2 Q. Did you do any work with the House Redistricting
3 Committee?

4 A. Yes, sir.

5 Q. Describe your work for the Senate Redistricting
6 Committee and then your work for the House
7 Redistricting Committee.

8 A. I believe the description would be roughly the
9 same.

10 Q. All right.

11 A. We are definitely a limited number in group within
12 the Research Division. When you have a topic of
13 assignment that is unique as redistricting, you
14 kind of do it all.

15 With the 2001 process, Bill Gilkeson was
16 the lead staff attorney. He functioned as an
17 intermediary between the staff and the members and
18 kind of helped relay information what needed to be
19 done, that kind of thing.

20 I was one of the staff that got the tasks
21 of assignment for both House, Senate and
22 Congressional. Generally, they turned on making
23 sure that we had bill text that accurately
24 reflected the map that was to be considered by the
25 General Assembly and supporting information to

Erika Churchill
Margaret Dickson, et al. v. Robert Rucho, et al.

March 20, 2012
11 CVS 16896 & 16940

Page 18

1 explain to the members what that map meant.

2 Q. Did you actually draw maps?

3 A. In 2001?

4 Q. Yes.

5 A. That was a long time ago.

6 Q. Best of your memory.

7 A. I don't remember drawing any statewide maps. I do
8 remember drawing amendments to statewide maps.

9 Q. For the House or the Senate or both?

10 A. For House and Senate, yes, sir.

11 Q. Do you recall working with Richard Morgan in
12 drawing some maps in the early 2000s?

13 A. Not in the 2001 round. I do remember doing that in
14 2003 when he was co-speaker.

15 Q. So we had multiple rounds of redistricting back in
16 that time thanks to Mr. Farr. Did your role -- you
17 were involved in the drawing of the first plans in
18 the ways you've described.

19 A. Yes, sir, as committee staff.

20 Q. And those plans were declared unconstitutional?

21 A. Yes.

22 Q. And the legislature came back and drew new plans --

23 A. Yes, sir.

24 Q. -- in a bit of a hurry?

25 A. 2002, yes, sir.

Erika Churchill
Margaret Dickson, et al. v. Robert Rucho, et al.

March 20, 2012
11 CvS 16896 & 16940

Page 19

1 Q. Were you involved in that process?

2 A. Yes.

3 Q. What was your role in that process?

4 A. Very similar to the 2001 process.

5 Q. And then the legislature comes back in 2003 and
6 draws again?

7 A. Yes.

8 Q. House and Senate?

9 A. Just House and Senate, no Congressional.

10 Q. What was your role in 2003?

11 A. In 2003 I was still committee staff, and I honestly
12 do not remember if it was House, Senate or both,
13 but in 2003, functioning very similar to how I had
14 in 2001 and 2002, the plans were drawn outside of
15 the General Assembly. They were imported into our
16 system and then modified accordingly.

17 Any time you have two different mapping
18 databases, you run the risk that the maps are not
19 going to import exactly alike because it depends on
20 the database they're drawn off of. In 2003 that
21 was done. There was some parts that still needed
22 to be filled in. I was involved with Speaker
23 Morgan in filling in those blank parts.

24 Q. And you were the map drawer in that sense?

25 A. In terms of -- yes, I was in the room being told

Erika Churchill

March 20, 2012

Margaret Dickson, et al. v. Robert Rucho, et al.

11 Civ 16896 & 16940

Page 155

1 VTD lines?

2 A. No, sir, I don't believe they are. There again you
3 have the levels of geography that you choose to
4 assign. There are counties that are kept whole in
5 accordance with the Stephenson opinion and the
6 House and the Senate, I believe there are whole
7 counties in the Congressional plan, and then you
8 have some that the VTD is the unit of assignment
9 and remains whole and intact and then you have

10 other areas that the census blocks was used as the
11 level-of-assignment layer.

12 Q. Okay. That's what I wanted to get you to explain.
13 So there are -- in the plans there are VTDs that
14 are kept whole and there are VTDs that are divided
15 into different districts; is that correct?

16 A. Yes, sir. When you read the session log, that's
17 actually how it reads, you read the hierarchy, you
18 read -- after following District 1, you'll see the
19 whole counties, they're involved in District 1. If
20 the county is split, then you'll see the name of
21 the county and a colon, and whether it's a VTD that
22 is whole or if the VTD -- if you see a semicolon --
23 if a VTD is split, then you see a semicolon and a
24 list of census blocks numbers.

25 Q. Good. Thank you very much.

Erika Churchill
Margaret Dickson, et al. v. Robert Rucho, et al.

March 20, 2012
11 CVS 16896 & 16940

Page 156

1 I wanted to go back on one topic that you
2 testified on direct examination and that was you, I
3 believe, testified that in 2001, 2002 and 2003 the
4 redistricting plans were based upon maps that came
5 from some other source; is that correct?

6 A. Yes, sir. Just like this round of redistricting,
7 the initial maps that came in for the staff to work
8 up in terms of committee staff.

9 (Brief Interruption.)

10 BY MR. FARR:

11 Q. Let's talk about 2001. I think there were 2000,
12 2001, 2002 and I think it was 2003 carrying over
13 into 2004 was the final round as I remember it.

14 In 2001, what do you recall about where the
15 maps originally came from?

16 A. I believe in 2001, 2002 very similar structure
17 where the map came from an outside source. It had
18 been drawn in a software system outside of the
19 General Assembly's.

20 The ISD -- our Information Systems Division
21 imported it into our system and we began to work it
22 up doing something very similar to what we did this
23 time, identifying if there were any misassignments
24 of geography.

25 The whole concept as it was this time was

Erika Churchill

March 20, 2012

Margaret Dickson, et al. v. Robert Rucho, et al.

11 CvS 16896 & 16940

Page 157

1 to make sure that the plan that came forward in
2 terms of a bill was the plan that was intended to
3 be the one -- in other words, the one that came
4 from outside got into our system looking exactly
5 the same.

6 Q. Was there a typical person you worked with who
7 relayed the outside maps to the General Assembly
8 staff?

9 A. Generally in 2001, 2002 and 2003 that was Kevin
10 LeCount.

11 Q. Can you spell that for the court reporter.

12 A. In terms of the Democratic party plans.

13 I think it's might be L-E-C-O-U-N-T.

14 Q. So he -- when you say Democratic party plans, what
15 did you mean by that?

16 A. The plans that came from the majority party that
17 were ultimately the plans that were enacted by the
18 General Assembly.

19 Q. Was Kevin LeCount an employee of the General
20 Assembly?

21 A. No, sir, he was not, to the best of my knowledge.

22 Q. Do you know who he was employed by?

23 A. No, sir.

24 Q. Were the maps that he initially relayed to the
25 General Assembly staff, were they drawn on the

Erika Churchill
Margaret Dickson, et al. v. Robert Rucho, et al.

March 20, 2012
11 CVS 16896 & 16940

Page 158

1 General Assembly's computers or someplace else?

2 A. They were drawn somewhere else.

3 At the time the General Assembly had its
4 own software system that had been developed
5 internally at the General Assembly, and it was not
6 available to anyone outside of the General
7 Assembly.

8 Q. What happened in the 2003-2004 timeframe?

9 A. It was a very similar process. In fact, an
10 identical process for the Senate plan.

11 In 2003, the membership of the House was
12 split along party lines and there was a
13 co-speakership. I have kind of always assumed
14 because of that the House plan was developed
15 slightly differently in that we had a plan that
16 came in that was not a complete, whole state plan.
17 That plan that was not a complete, whole state plan
18 was reviewed jointly by Speaker Black and Speaker
19 Morgan and there were changes made according to
20 that plan.

21 Q. Who was the source of this House plan, was that
22 Mr. LeCount or somebody else?

23 A. Yes, sir, that was Mr. LeCount.

24 Q. In 2003 and 2004 did you observe Mr. LeCount making
25 any adjustments in the plan after it was imported

Erika Churchill
Margaret Dickson, et al. v. Robert Rucho, et al.

March 20, 2012
11 CvS 16896 & 16940

Page 159

1 into the state system?

2 A. Yes, sir, we kind of by default developed a process
3 where we were simultaneously running the mapping
4 system that he was using and the mapping system of
5 the General Assembly in making identical
6 assignments in both simultaneously.

7 Q. Where was the location for it, that process?

8 A. Speaker Morgan's conference room.

9 Q. Did Mr. LeCount interact with you or the staff in
10 2001 or 2002 to make changes on the maps after they
11 had been originally imported?

12 A. Yes, sir.

13 Q. Do you recall how that worked?

14 A. Generally at the instruction of the Chairs at that
15 point who were giving us instruction, we would
16 import the plan and then would run the reports to
17 make sure it was contiguous and all the areas were
18 assigned. And again, in 2001-2002-2003 timeframe
19 the General Assembly did use the precinct as the
20 unit of assignment of geography.

21 We also ran a report to see what was split
22 there. If we saw something that looked
23 questionable, we would give a call -- and we were
24 generally told to call Kevin and work through it so
25 we generally called Kevin and worked through it.

Erika Churchill
Margaret Dickson, et al. v. Robert Rucho, et al.

March 20, 2012
11 CVS 16896 & 16940

Page 160

1 Q. So in the 2001, 2002 and 2003 and 2004
2 redistricting years, you worked with Mr. LeCount to
3 make adjustments to the plans after they had been
4 imported originally?

5 A. Yes. Although I think all the drawing was finished
6 by 2003. I don't know that it was fully
7 implementable because of the pre-clearance process,
8 but I think all the drawing was finished by 2003.

9 Q. So any interactions with Mr. LeCount in the
10 2003-2004 timeframe would have been completed by
11 the end of the year in 2003?

12 A. Yes, with regard to any changes to the maps.

13 Q. I think that's all I have.

14 MR. SPEAS: I have a couple questions.

15 FURTHER EXAMINATION

16 BY MR. SPEAS:

17 Q. Put on your map drawer hat. You've had experience
18 drawing lines. If I am drawing the line of -- that
19 separates one district from another, I can follow a
20 census block line, correct?

21 A. Correct.

22 Q. I can follow a VTD line?

23 A. In terms of units of assignment available in the
24 General Assembly's computer, the opportunities are
25 the census block, which is the smallest unit, the

Exhibit 2

STATE OF NORTH CAROLINA
CONGRESSIONAL REDISTRICTING COMMITTEE MEETING

COPY

BEFORE: Representative Ed McMahan
Congressional Redistricting
Committee

Representative Thomas Wright
Congressional Redistricting
Committee

TRANSCRIPT
OF
MEETING

At Raleigh, North Carolina
November 14, 2001 - 11:17 a.m.

Reported by:
Amy L. Poythress, CVR

**Capital
Reporting**
General Court Reporting

Post Office Box 19418
Raleigh, NC 27619
(919) 787-7775

DEFENDANT'S EXHIBIT
Case No. 16cv1026
16cv1164
Exhibit No. 5022

C-28F-6(d)

1 REPRESENTATIVE ELLIS: Thank you, Mr.
2 Chairman.

3 Representative Wright, did you
4 substantially draw this plan?

5 REPRESENTATIVE WRIGHT: Yes, sir.

6 REPRESENTATIVE ELLIS: Follow-up, please.

7 REPRESENTATIVE MCMAHAN: Yes, follow-up,
8 Representative Ellis.

9 REPRESENTATIVE ELLIS: One of the
10 concerns that I think the population is
11 concerned about in this, and there's a lot of
12 things I think most of the time a lot of
13 them think they're in Washington, but I know
14 one thing that they are concerned about is
15 the commonality in interest, and I've heard
16 that repeatedly in talking to people in my
17 district..

18 In looking at the 2nd District, can you
19 explain for me what commonality you believe
20 southeastern Wake County has with southern
21 and eastern Sampson?

22 REPRESENTATIVE WRIGHT: Well, common
23 interest is what common interest is,
24 Representative Ellis, and what we looked at

1 here, again, was performance and with the
2 intent of certainly keeping the Democratic
3 advantage or one party's advantage in the
4 performance in this district. So it's based
5 on voting patterns and how these citizens
6 typically vote and the other interests that
7 they had, we thought that certainly
8 represented a good mix of the rural and
9 urban.

10 REPRESENTATIVE ELLIS: Follow-up, please.

11 REPRESENTATIVE WRIGHT: I yield.

12 REPRESENTATIVE ELLIS: Thank you. I
13 don't know -- what I'm hearing you say is
14 that you were interested in combining these
15 areas because of political performance and
16 the anticipated outcome of the vote, but I'm
17 more interested in the economic or the
18 geographic continuity in these areas. And
19 I'm just -- I don't see that this area of
20 Wake County has any common interest with
21 that area of Sampson County. And so I want
22 to know how the people of North Carolina are
23 better served by such a broad expanse in
24 geography.

1 that's correct.

2 REPRESENTATIVE DAUGHTRY: Mr. Chairman.

3 REPRESENTATIVE MCMAHAN: Yes,
4 Representative Daughtry.

5 REPRESENTATIVE DAUGHTRY: Question for
6 Representative Wright.

7 REPRESENTATIVE WRIGHT: Yes, sir.

8 REPRESENTATIVE DAUGHTRY:: When
9 following up with that question and also the
10 question about commonalities of interest that
11 Representative Ellis mentioned regarding
12 lower Sampson and east Wake, my understanding
13 was that the 2nd District and the 13th were
14 drawn in such a way as they are drawn
15 without regard for commonality of interest
16 but to make sure that the incumbent Democrat
17 was to be re-elected, and the 13th, my
18 understanding was the reason it was drawn so
19 that it would snake down into Guilford county
20 was to make sure it stayed a Democrat
21 district, without regard to any -- any kinds
22 of traditional criteria -- for example,
23 commonalities of interest or keeping counties
24 or keeping communities together, but simply

1 done to make sure that the 13th was a
2 Democrat district, and, second, was a more
3 stronger Democrat district than it is now.
4 Is that correct?

5 REPRESENTATIVE WRIGHT: Partly correct,
6 yes, sir.

7 REPRESENTATIVE DAUGHTRY: Partly
8 correct. Follow-up.

9 REPRESENTATIVE MCMAHAN: Follow-up.

10 REPRESENTATIVE DAUGHTRY: What's the
11 other part?

12 REPRESENTATIVE WRIGHT: You know, part
13 of what you said was certainly one of the
14 considerations, but we used several variables
15 and several considerations as we were drawing
16 this, and that's why I said earlier the
17 common interest question certainly was
18 considered as we were drawing this in
19 addition to looking at ways to enhance the
20 performance Democratically or for one party
21 or another.

22 REPRESENTATIVE MCMAHAN: Follow-up,
23 Representative Daughtry?

24 REPRESENTATIVE DAUGHTRY: Yes. I mean,

Exhibit 3

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

COMMON CAUSE, et al.,

Plaintiffs,

v.

DAVID LEWIS, IN HIS OFFICIAL CAPACITY AS
SENIOR CHAIRMAN OF THE HOUSE SELECT
COMMITTEE ON REDISTRICTING, et al.,

Defendants.

**PLAINTIFFS' OBJECTIONS TO
REMEDIAL PLANS**

TABLE OF CONTENTS

	Page
INTRODUCTION	1
SUMMARY OF LEGISLATIVE PROCEEDINGS.....	3
A. Legislative Defendants Fail to Explain When, How, and Why They Chose Dr. Chen’s Simulated Maps to Serve as the Base Maps for the Remedial Plans	3
B. Legislative Defendants’ Counsel Sends Partisanship Data on Dr. Chen’s Maps to the Entire House Redistricting Committee and Political Staff	4
C. Legislative Defendants’ Counsel and the House Redistricting Committee Likely Gather and Analyze Partisanship Data on Dr. Chen’s House Maps	2
D. House Incumbents Draw Their Own Districts	6
E. The House Map Passes on a Party-Line Vote.....	7
ARGUMENT.....	8
I. The House’s Process Violated the Court’s Decree	8
A. Legislative Defendants Improperly Provided Partisanship Data to House Members and Relied on Outside Counsel with Access to Partisanship Data	8
B. The House’s Incumbency Protection Process Violated Multiple Aspects of the Court’s Judgment and Decree	11
II. The Court Should Reject Five House Groupings in the Proposed House Plan	16
A. Columbus-Pender-Robeson	17
B. Forsyth-Yadkin.....	21
C. Cleveland-Gaston	29
D. Brunswick-New Hanover.....	35
E. Guilford.....	41
III. The Referee Should Redraw the Five House Groupings.....	45
CONCLUSION.....	46
CERTIFICATE OF SERVICE	48

INTRODUCTION

This Court gave Legislative Defendants clear and simple instructions for drawing remedial districts. The Court ordered that “Legislative Defendants and their agents shall conduct the entire remedial process in full public view,” and that, “[t]o the extent that Legislative Defendants wish to retain one or more individuals who are not current legislative employees to assist in the map-drawing process, Legislative Defendants must seek and obtain prior approval from the Court to engage any such individuals.” Decree ¶¶ 8, 9. The Court ordered that “partisan considerations and election results data shall not be used in the drawing of legislative districts in the Remedial Maps,” Judgment COL ¶ 169, and “no effort may be made to preserve the cores of invalidated 2017 districts,” Decree ¶ 6. And the Court made clear that any efforts to protect incumbents must be “reasonable” and limited to avoiding pairing incumbents into the same district. Judgment COL ¶ 168.

One of the two chambers of the General Assembly violated every one of these commands. In violation of the Court’s transparency requirements, the House Redistricting Committee secretly engaged two of Legislative Defendants’ experts, including a political consultant who specializes in elections data analytics and who helped Legislative Defendants in drawing the unconstitutional 2011 Plans, to analyze Dr. Chen’s maps and data before the House moved forward with its process. Legislative Defendants’ counsel also emailed partisanship data on Dr. Chen’s maps to every member of the House Redistricting Committee, just hours after the announcements that each chamber would use one of Dr. Chen’s simulations as its base map. The House then permitted the incumbents of each relevant county grouping to revise their own districts to their personal liking, and to do so largely outside of public earshot.

These procedural violations would provide ample grounds to throw out the House’s remedial plan (the “Proposed House Plan”) in its entirety, but in an effort to limit the scope of

relief the Court must grant, Plaintiffs focus their objections here on five House county groupings where the House's procedural violations led to the most significant substantive violations of the Court's Decree. These five groupings are: (1) Columbus-Pender-Robeson; (2) Forsyth-Yadkin; (3) Cleveland-Gaston; (4) Brunswick-New Hanover; and (5) Guilford. Incumbents in these groupings acted with partisan intent and impermissibly sought to preserve the cores of their prior districts, in violation of the Court's mandates. Indeed, as detailed in Dr. Chen's new expert report attached as Exhibit A, Dr. Chen has created new simulations for these five groupings that avoid pairing the current incumbents, and he finds that in four of the five groupings the Proposed House Plan is an extreme, pro-Republican partisan outlier. Two of the groupings are 100% outliers—the adopted map, as amended by the incumbents, is more favorable to Republicans than all 1,000 of Dr. Chen's simulations for that grouping. Dr. Chen also finds that the only grouping that is not a partisan outlier, Guilford County, nonetheless replicates the prior version of one of the districts in the grouping. Dr. Chen further finds that the amendments to the base map in Guilford County and several of the other groupings significantly subordinated compactness in service of partisan advantage.

This Court gave the General Assembly an opportunity to draw remedial maps and cure their prior constitutional violations. Although its process was not without flaws, the Senate has done so. But the House has not. The Court should pay no heed to the threats in Legislative Defendants' most recent filing and should direct the Referee to redraw these five House groupings.

SUMMARY OF LEGISLATIVE PROCEEDINGS

A. Legislative Defendants Fail to Explain When, How, and Why They Chose Dr. Chen’s Simulated Maps to Serve as the Base Maps for the Remedial Plans

On September 9, six days after this Court’s Judgment, Legislative Defendants held their first hearings. Senator Newton, who now serves as a co-chair of the Senate Redistricting Committee, announced that he and his co-chairs had decided to select one of Dr. Chen’s simulated maps from the litigation to serve as the “base map” for the new Senate plan. Several hours later at the opening hearing of the House Redistricting Committee, Representative Lewis stated that he independently had decided also to use one of Dr. Chen’s simulations as the base map for the new House plan. 9/9/19 House Comm. Tr. at 16:21-17:21; *see also id.* at 45:20-23 (Representative Lewis claiming he had not been “aware of exactly what approach the Senate was going to take until this morning”). Neither the House nor Senate Committee leadership explained who was involved in the decision to use Dr. Chen’s simulated plans (*e.g.*, whether it included outside counsel or consultants), when those discussions took place, or what analysis was done of Dr. Chen’s maps before deciding to use them as the base maps. Legislative Defendants’ most recent filings still do not provide any of this information. Legislative Defendants have not indicated whether they, their counsel, or their consultants analyzed the partisan attributes of Dr. Chen’s simulated maps in deciding to use them as a central foundation of the remedial process. When Representative Hawkins asked the leadership of the House Committee whether they had consulted with counsel who had access to partisanship data on Dr. Chen’s maps, Representative Hall, who was serving as Chair of the House Redistricting Committee, invoked attorney-client privilege. 9/10/19 House Comm. Tr. at 85:19-86:4.

There is reason to believe that partisan considerations did factor into Legislative Defendants’ choice of Dr. Chen’s maps. Whereas the Senate used Dr. Chen’s Simulation Set 2

that sought to avoid pairing the incumbents in place at the time each relevant district was drawn in 2011 or 2017, the House ultimately used Dr. Chen’s Simulation Set 1 that did not consider incumbency at all. Legislative Defendants have not explained why the House and Senate pulled their base maps from different simulation sets. Notably, the set chosen by each chamber is the one that is relatively more favorable to Republicans. Based on the 2010-2016 statewide elections that Dr. Chen employed to measure partisanship, House Simulation Set 1 produces a distribution of seats more favorable to Republicans than House Simulation Set 2. *See* PX1 at 27 (final row listing distribution of seats in House Simulation Sets 1 and 2). In contrast, Senate Simulation Set 2 produces a distribution of seats slightly more favorable to Republicans than Senate Simulation Set 1. *Id.* at 58 (listing distribution of seats in Senate Simulation Set 1 and 2).

B. Legislative Defendants’ Counsel Sends Partisanship Data on Dr. Chen’s Maps to the Entire House Redistricting Committee and Political Staff

Shortly after the leaders of the House and Senate Committees announced their intent to use Dr. Chen’s simulated plans, legislative staff emailed counsel for Plaintiffs and Legislative Defendants requesting shapefiles and block assignment files for Dr. Chen’s simulated maps as well as an Excel spreadsheet listing scores for compactness, split VTDs, and split municipalities for each map. Ex. B (9/9/19 3:10 PM email from Churchill). Plaintiffs’ counsel responded that they would send the requested information later that day. *Id.* (9/9/19 3:22 PM email from Jones). Nonetheless, Legislative Defendants’ counsel proceeded send emails to both the House and Senate Committees with a link to a repository containing all of Dr. Chen’s backup files that Plaintiffs had transmitted to all Defendants with his opening expert report on April 8, 2019. *Id.* (9/9/19 3:50 PM and 4:24 PM email from Riggins); Ex. C (9/9/19 4:21 email from Riggins). Legislative Defendants’ counsel’s emails containing the link to these backup files went to dozens of recipients, including *all* members of the House and Senate Redistricting Committees, several

political staffers for Representative Lewis, and career staff. Ex. B; Ex. C. All of these recipients were also able to forward the link to anyone else, and any subsequent recipient could have downloaded the files available through the link.

The files that Legislative Defendants distributed—on the first day of the legislative process, within hours after the announcements that Dr. Chen’s simulated maps would serve as the base maps—contained extensive partisanship data on every district in every one of Dr. Chen’s simulated plans. That is because Dr. Chen analyzed the partisan characteristics of his simulated plans in his opening expert report. The screenshots copied below show some of the partisanship data that was in the files that Legislative Defendants’ counsel sent. In these files, which relate to one of Dr. Chen’s 2,000 simulated House maps, the numbers in Column A (*e.g.*, “G1.1”) represent the label for each district in the plan, the next two columns contain the compactness scores for each district, and the numbers in the columns to the right represent the number of votes received by the Democratic (“D”), Republican (“R”), and Libertarian (“L”) candidates in a particular election for that simulated district (*e.g.*, “EL10G_USS” means the 2010 general election for U.S. Senate). In the fourth-to-last column in the second screenshot below, the column “rshare17” indicates the average Republican vote share in the given simulated districts using the ten statewide elections from 2010 to 2016 that Dr. Chen used to measure partisanship in his report.

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	AA	AB	AC	AD	AE	AF	AG	AH	AI	AJ	AK	AL	AM	AN	AO	AP	AQ
	IDe	reock	pper	group	TOT	TOT	USS_D	ELI0G_USS_R	ELI0G_USS_L	ELI0G_USS_W	ELI0G_USS_T	ELI0G_PR_R	ELI0G_PR_L	ELI0G_PR_W1	ELI0G_PR_W2	ELI0G_PR_T	ELI0G_GV_D	ELI0G_GV_R	ELI0G_GV_L	ELI0G_GV_W1	ELI0G_GV_W2	ELI0G_GV_T	ELI0G_LG_D	ELI0G_LG_R	ELI0G_LG_T	ELI0G_USS_R	ELI0G_USS_D	ELI0G_USS_L	ELI0G_USS_T	ELI0G_PR_R	ELI0G_PR_D	ELI0G_PR_L	ELI0G_PR_W1	ELI0G_PR_T	ELI0G_USS_R	ELI0G_USS_D	ELI0G_USS_L	ELI0G_USS_T	ELI0G_GV_D	ELI0G_GV_R	ELI0G_GV_L		
2	G1.1	0.454091	0.411402	1	75628	56630	7683	11258	473	6	19420	14735	17374	284	8	60	32461	13103	18357	682	1	7	32150	14573	16977	31550	10907	8901	850	43	20701	18148	15018	852	325	34343	18251	14631	1156	34038	16056	17474	619
3	G1.2	0.307377	0.246185	1	75503	59058	7763	13754	556	19	22092	14140	20796	313	10	56	35315	12521	21687	751	1	3	34963	13827	20373	34300	13473	9244	880	30	23627	20667	14815	943	389	36814	21129	14242	1212	36583	15976	20027	664
4	G2.1	0.498231	0.317955	2	82809	64021	7018	15475	550	4	23047	9982	23740	412	7	98	34129	8864	24505	728	0	8	34105	10703	22393	33036	15065	6794	1345	61	23265	28012	8029	835	344	37220	27275	8123	1417	36815	10324	26005	699
5	G2.2	0.356438	0.261501	2	83426	64486	5999	16523	590	6	23118	10106	25668	447	14	96	36331	9047	26461	810	0	10	36328	11086	24337	35423	16059	6900	1441	73	23873	29299	8174	942	363	38778	26800	8292	1601	38493	10673	27005	902
6	G2.3	0.516974	0.333981	2	82856	64640	7761	13900	689	18	22368	15142	21594	303	6	72	37117	14039	22130	667	0	10	36466	15903	20062	35965	13615	9782	1289	65	24751	22745	13141	735	290	36911	22145	13115	1316	36576	14970	20980	738
7	G2.4	0.508466	0.278664	2	83319	64502	7941	16930	719	14	25604	10493	25386	505	7	117	36508	8857	27047	627	1	7	36539	10979	24502	35481	15992	6658	1572	81	24303	28871	8724	875	347	38817	27691	8899	1806	38396	10695	27239	798
8	G3.1	0.53553	0.318387	3	76052	53352	5171	13343	444	13	18971	12309	23563	395	18	93	36378	8835	26724	615	3	9	36186	11648	23502	35150	14132	7280	779	98	22289	25170	13288	1344	521	40323	25571	12424	1834	39829	14090	24947	1043
9	G3.2	0.49978	0.425911	3	75837	56542	7733	9852	248	7	17840	14701	16872	208	5	66	31852	12987	18341	371	1	7	31707	15290	15638	30928	9998	8295	696	41	19030	18663	12299	596	219	31777	18298	12005	1033	31336	12377	18697	464
10	G3.3	0.48454	0.453419	3	76351	51500	5304	14089	479	12	19884	12482	24838	356	7	71	37754	9176	27591	663	3	6	37439	11829	24669	36498	15845	7631	789	74	24339	27372	14616	1518	650	44156	28400	13487	1769	43656	15311	27601	993
11	G6.1	0.463689	0.278242	6	75491	58327	8783	13981	450	14	23228	15032	20453	253	2	61	35801	14373	20699	575	0	4	35651	16150	18809	34959	13602	10552	1178	105	25437	21334	13841	671	291	36137	20973	13381	1271	35625	13911	21474	500
12	G6.2	0.411915	0.243694	6	75773	58207	6789	13899	406	9	21103	13166	20452	291	3	77	33989	11737	21267	653	0	12	33669	13405	19695	33100	13718	8486	827	42	23073	20940	12553	965	344	34802	21081	12010	1377	34468	12758	21062	718
13	G8.1	0.512436	0.357101	8	83430	59498	7716	10527	364	8	18615	14308	17323	328	0	72	32031	13342	17792	699	0	9	31842	14885	16245	31130	10309	8825	911	37	20082	18562	13835	1027	333	33757	18324	13808	1265	33397	14920	17776	840
14	G8.2	0.634373	0.519199	8	83434	62046	7629	12449	383	6	20467	12483	20186	313	1	65	33048	11503	20783	639	1	13	32399	13361	19081	32442	12311	7816	892	39	21058	21551	12234	878	336	34999	21291	12286	1191	34768	12958	21159	719
15	G8.3	0.417933	0.204564	8	83434	62500	6648	15135	288	3	22074	11225	23168	207	0	10	34610	10712	23356	409	0	6	34483	11992	21902	33894	15288	7526	909	32	23755	24108	11190	696	259	36253	23855	11023	986	35864	11596	24052	443
16	G8.4	0.505295	0.331582	8	83429	60611	7544	15801	444	11	23800	12869	24638	380	1	100	37988	11610	25518	722	1	15	37866	13534	23578	37112	15636	8362	989	51	25038	27565	13124	1117	371	42177	27406	13094	1397	41897	14613	26743	735
17	G8.5	0.629125	0.352975	8	83433	59843	7857	14249	461	9	23576	14662	22446	371	0	106	37585	13322	23353	740	0	8	37423	15096	21580	36676	14075	9207	989	42	24313	25357	15604	1200	446	42607	25197	15512	1542	42251	16877	24773	812
18	G9.1	0.457765	0.268662	9	77062	60510	11293	10362	451	8	22114	21920	15370	410	0	100	37800	19432	16639	1090	2	11	37174	21541	14772	36913	8963	13682	1029	39	23713	17947	22282	1354	549	42132	18192	21411	1819	41422	23630	16803	1155
19	G9.2	0.627018	0.508728	9	79867	64851	8369	16199	552	12	25132	16363	23760	513	2	143	40781	13595	25239	1229	0	12	40075	15900	22928	38828	14098	10733	1262	49	26142	24291	18364	1722	665	45042	24923	17508	1948	44379	20733	22543	1295
20	G9.3	0.207556	0.325577	9	77140	60933	9012	16226	584	15	25837	17288	22490	469	2	108	40357	14556	24059	1164	0	9	39788	17148	21593	38741	13531	11868	1477	46	26922	23816	18064	1446	603	43929	23752	17444	2098	43294	20393	21868	1245
21	G9.4	0.491621	0.379108	9	76029	63230	9386	19704	631	9	29730	15135	26508	336	4	69	42052	12702	28078	872	0	4	41656	15674	25099	40773	17809	10897	1706	39	30451	31991	15524	1144	448	49107	31382	14977	2024	48383	16873	30603	1111
22	G10.1	0.382739	0.360153	10	78607	62653	13252	11454	690	16	25412	23703	17674	588	3	218	42186	21680	18544	1439	0	11	41674	23488	17293	40781	10866	16616	1109	24	28615	18350	24927	1281	1179	45737	18200	25340	1728	45268	27287	16635	1324
23	G10.2	0.55907	0.420114	10	82348	64434	12019	12922	672	13	25626	22981	19133	548	6	219	42887	20919	20083	1387	0	16	42405	22853	18722	41575	11617	15766	1133	41	28557	19574	25175	1552	1178	47479	19834	25164	1967	46965	27286	18337	1521
24	G10.3	0.484765	0.324295	10	77363	62391	13724	12229	714	22	26889	22934	17892	585	4	199	42614	21783	18912	1396	0	8	42099	22513	18726	41279	13389	12073	1204	41	29107	17791	25347	1453	1137	45728	18055	25387	1838	45280	27299	16704	1498
25	G11.1	0.415077	0.297654	11	80563	62648	7775	12560	459	4	20796	12509	20295	399	4	119	33327	9957	22744	602	0	14	33917	13025	19411	32496	12953	8156	1379	41	22529	23640	10421	908	414	35383	22794	10576	1614	34924	12311	22126	777
26	G11.2	0.430136	0.328111	11	78139	60662	6339	13857	500	10	20726	10566	20925	345	5	78	31219	13112	18235	547	1	9	31902	11866	18962	30828	12969	7305	1253	28	21555	24489	8542	704	329	33844	22797	9135	1310	33242	10573	22012	827
27	G11.3	0.434842	0.470454	12	82863	60163	7096	16495	539	0	24132	13613	25794	440	0	0	39847	9716	29442	735	0	0	39903	13605	24940	38545	15323	8775	1188	94	25380	28326	15031	1428	361	45348	28141	14676	2132	44949	16422	27631	1138
28	G11.4	0.370726	0.384435	12	80380	61151	5311	14541	544	12	20436	9929	24951	412	1	131	35424	7453	27293	601	0	3	35350	10067	24946	36463	14587	8752	1349	57	21453	27647	8388	888	364	37285	26444	8419	2020	36883	9876	26302	949
29	G12.3	0.486494	0.361344	12	82262	62399	7669	16348	548	11	24576	14100	24532	371	9	103	39115	11783	26547	651	0	13	38994	13789	24439	38222	15581	8663	1174	51	25469	26362	12744	1064	445	40615	26070	12423	1778	40266	14403	25057	971
30	G12.4	0.411191	0.306688	12	82734	62735	10539	11479	418	11	22447	15868	18281	285	0	31	34489	14464	19292	556	0	21	34333	17326	15877	33203	1																

	A	CK	CL	CM	CN	CO	CP	CQ	CR	CS	CT	CU	CV	CW	CX	CY	CZ	DA	DB	DC	DD	DE	DF	DG	DH	DI	DJ	DK	DL	DM	DN	DO	OP	OQ	OR	OS	OT	DU	DV	DW	DX	DY	DZ
	ID6	ELO8G_VLV_R	ELO8G_GVL_I	ELO8G_GVT_O	ELO8G_LGD_D	ELO8G_LGR_I	ELO8G_LGL_I	ELO8G_LGT_QT	ELO8G_PRR_D	ELO8G_PRR_R	ELO8G_PRL_I	ELO8G_PRW_W	ELO8G_PRT_TO	ELO8G_SPD_D	ELO8G_SPL_R	ELO8G_SPL_I	ELO8G_SPL_TOT	ELO8G_SPL_D	ELO8G_SPL_R	ELO8G_SPL_TO	ELO8G_USD_D	ELO8G_USS_R	ELO8G_USS_L	ELO8G_USS_W	ELO8G_USS_T	ELO8G_SPD_D	ELO8G_SPL_R	ELO8G_SPL_I	ELO8G_SPT_TOT	ELO8G_USD_D	ELO8G_USS_R	ELO8G_USS_L	ELO8G_USS_W	ELO8G_USS_T	r_votes	dvotes	r_votes	dvotes	rshare	rshare		repspea	
1	G1.1	14141	1061	30699	14860	14308	883	300351	14616	16105	189	55	30965	9715	7078	147	16940	15144	14222	29366	15530	14681	973	11	30695	4276	4426	62	8764	7683	11258	473	6	19420	164329	135116	180215	180789	0.4992	0.5488	180215	180789	FALSE
2	G1.2	16940	1144	35043	14943	17028	1015	32328	14302	18754	247	85	33388	8940	8175	141	17526	14612	16378	31370	15571	16463	1053	8	33095	3992	4934	77	9003	7763	13754	556	19	22092	193265	132151	213309	178742	0.5469	0.5893	213309	178742	TRUE
3	G2.1	18434	1160	34717	13639	19100	1102	33841	11637	22652	329	156	34774	5929	7886	220	14035	13585	19117	32702	14294	19098	1338	11	34741	2506	5063	122	7691	7018	15475	550	4	23047	234768	88678	253533	167445	0.6022	0.7259	253533	167445	TRUE
4	G2.2	20006	1320	36336	13280	20935	1348	35563	11584	24262	385	174	36405	6083	9684	200	15967	13046	21515	34561	14104	20655	1627	18	36404	2500	6639	120	9259	8999	16523	590	6	23118	249219	88700	285074	168333	0.6285	0.7375	285074	168333	TRUE
5	G2.3	16557	1039	36622	17642	16797	1277	35716	15914	20660	279	113	36406	9949	7452	222	17623	17321	12787	34608	18158	17022	1456	22	36658	3628	3767	170	7566	7761	13900	689	18	22368	199787	133000	230672	219328	0.5126	0.6022	230672	219328	TRUE
6	G2.4	22101	1014	36774	13273	21354	1229	35806	11565	24711	383	251	36910	9239	8845	206	14974	13902	21207	34509	14203	20929	1606	15	36753	3004	5235	187	8526	7941	16930	719	14	25604	247868	93399	272721	167744	0.6231	0.7584	207072	167744	TRUE
7	G3.1	23181	710	33166	10585	20830	846	32261	11964	21187	215	109	33425	5900	11310	140	17350	11468	19612	31080	12516	19238	1234	18	33006	2480	5980	33	8493	5171	13343	444	13	18971	227949	110876	244785	130527	0.6522	0.6728	244785	130527	TRUE
8	G3.2	15863	420	29826	14322	14304	530	29134	13816	18004	146	76	30042	10318	6790	115	17223	14745	13571	28316	15028	13845	808	11	29992	4932	3626	62	8620	7733	9852	248	7	17840	162216	120910	174479	178679	0.4941	0.5729	174479	178679	FALSE
9	G3.3	23262	646	33027	10323	21007	813	32143	11855	21189	211	90	33355	9998	10928	126	17052	11707	19843	30860	12282	19455	1107	24	32868	2545	5493	55	8093	5304	14089	479	12	19884	246942	117539	245412	128972	0.6535	0.6775	245412	128972	FALSE
10	G6.1	13755	784	34191	16228	15908	816	33552	14903	19338	136	24	34401	10124	6434	131	16689	16284	16374	26568	16325	16854	981	5	34165	4905	3729	91	8725	8783	13681	450	14	23228	192200	134443	207204	209947	0.4872	0.5885	207204	209947	FALSE
11	G6.2	13948	755	32225	14062	16717	863	31642	13541	18586	181	95	32403	8651	8163	146	16960	14429	16368	30797	14044	17175	952	14	32185	3745	4795	55	8595	6789	13899	406	9	21103	193447	116183	201563	168894	0.5441	0.6248	201563	168894	TRUE
12	G8.1	14286	916	30349	14788	13867	957	29612	13953	16339	201	104	30397	8150	5339	157	13846	15491	14941	28910	15026	14297	1047	16	30386	4179	4306	80	8545	7176	10517	384	8	18615	162572	130581	188528	197292	0.4944	0.5548	188528	197292	FALSE
13	G8.2	16366	763	31218	13804	16017	827	30484	12230	19818	170	86	31364	7667	6711	128	14506	14048	16022	30106	13993	16399	901	10	31201	3249	4859	63	8171	7629	12449	383	6	20467	197638	115993	209554	171623	0.5498	0.6122	209554	171623	FALSE
14	G8.3	17815	598	33267	13789	18037	625	32451	11197	22230	115	56	33998	7299	8038	124	15461	13132	18530	31662	19133	19665	735	9	33322	4225	7084	62	11371	6648	15135	288	3	22074	170139	104982	226394	158025	0.5889	0.6746	226394	158025	TRUE
15	G8.4	20200	852	35380	14112	19656	362	34630	12884	22385	196	93	35558	7488	8656	158	16902	14624	19311	33935	14296	20053	1017	15	35381	3460	6452	39	10001	7544	15801	441	11	23800	240859	122192	258215	175441	0.5954	0.6634	258215	175441	TRUE
16	G8.5	18428	832	34577	15126	17749	321	35796	14422	20068	191	110	34791	8315	7659	139	16113	15814	17239	33073	15496	18017	1022	19	34554	3297	6334	89	10680	7857	14249	464	9	22576	220951	140100	231211	187452	0.5523	0.612	231211	187452	TRUE
17	G9.1	12173	1400	34037	19579	12185	1594	33353	20735	19311	188	118	34852	11580	5025	162	16717	19842	12383	32225	21673	11248	1208	14	34143	5010	3304	89	8403	11293	13062	451	8	22114	154065	190955	153757	246197	0.5844	0.6559	153757	246197	FALSE
18	G9.2	19971	1693	38741	15733	20072	1764	37569	17294	21827	253	170	39544	7540	8412	190	16142	16419	19605	36024	18933	18368	1585	24	38910	2757	4725	63	7525	8369	16199	552	12	25132	222041	157975	254004	200964	0.5583	0.5843	254004	200964	TRUE
19	G9.3	19054	1645	38019	15714	19526	1826	37066	16925	21401	211	164	38701	7630	7536	174	15340	16766	18849	35615	18925	17564	1615	17	38219	2994	4791	79	7864	9012	16126	584	15	25837	213346	162585	249144	208106	0.5449	0.5675	249144	208106	TRUE
20	G9.4	20609	1672	39207	15387	21144	1786	38453	15217	24009	251	144	39621	6812	8835	224	15871	16202	20845	37047	18624	18956	1740	18	39333	3647	7267	114	10128	9386	19704	631	9	29730	272175	149879	254683	198173	0.5624	0.6342	254683	198173	TRUE
21	G10.1	15067	1681	40434	22351	15547	1655	39517	23601	16821	312	237	40981	13057	6732	221	20010	23094	15041	38195	23959	15010	1604	15	40588	9622	4276	98	11296	13252	11454	690	16	25412	164276	138106	192327	196179	0.4103	0.4887	192327	196179	FALSE
22	G10.2	16539	1600	40381	20718	17260	1567	39545	22246	18297	261	226	41030	12179	7534	212	19925	21582	16800	38182	22627	16504	1603	14	40548	6435	4801	96	11332	12019	12922	672	13	25626	178523	223856	210174	253936	0.4529	0.4437	210174	253936	FALSE
23	G10.3	15640	1584	40967	22340	18259	1510	40109	23751	17338	306	239	41634	13598	7237	207	21042	22953	15798	38752	24081	15508	1540	15	41144	7545	4655	112	12312	13724	12229	714	22	26689	165675	239973	201009	276141	0.4213	0.4187	201009	276141	FALSE
24	G11.1	19257	1526	35196	15157	17402	974	35553	13619	20211	247	147	34224	7790	8418	251	16489	14933	17931	32864	15726	17079	1308	11	34124	3028	3922	110	7060	7775	12560	459	4	20798	201189	107939	224678	161342	0.5531	0.6508	224678	161342	TRUE
25	G11.2	16971	1020	31369	17931	12779	758	31668	10923	20660	223	133	31999	6092	6401	238	12761	13253	16583	29836	34190	16018	1210	14	31592	2683	4054	135	6782	6359	13857	500	10	20726	200199	197571	209502	162547	0.5627	0.6508	209502	162547	TRUE
26	G12.1	25540	848	37751	12727	22924	1144	36795	13528	23974	258	14	37774	6169	9457	148	15774	13624	21658	35282	15139	20832	1579	0	37550	2336	4148	68	6552	7098	16495	539	0	24132	252119	129673	284621	166353	0.6311	0.6604	284621	166353	TRUE
27	G12.2	23611	843	34551	10728	21901	1134	33783	10870	23858	293	126	34647	5207	9844	140	15181	11316	21470	32786	12015	20860	1567	14	34486	2103	6074	97	8274	5311	14541	544	12	20408	238692	84124	284629	142312	0.6667	0.7394	284629	142312	TRUE
28	G12.3	21880	1103	37917	14396	21504	1154	37054	14424	23402	268	124	38118	7881	9559	195	17635	14924	21040	36018	15939	20738	1297	21	37965	3436	8344	108	9888	7669	16348	548	11	24576	236116	122238	274329	180706	0.5998	0.6589	274329	180706	TRUE
29	G12.4	15482	691	33950																																							

Once the House and Senate Redistricting Committees announced the specific Chen base map that was selected for each grouping, any recipient of the backup files that Legislative Defendants’ counsel sent on September 9 could have looked up the partisanship data for any given district. At the Committees’ request, Dr. Chen had also sent PDFs to the Committees of each simulated House and Senate map, and those PDFs labeled the districts using the same labels of “1.1,” “1.2,” etc. that appear in Dr. Chen’s backup files containing all the partisanship data. *See, e.g.,* Ex. F (one of the PDFs that Dr. Chen provided to the Committees).

While career staff from the Legislative Services Office stated that they did not complete downloading the backup files that Legislative Defendants’ counsel distributed, Legislative Defendants never disclosed whether any other recipients of the email downloaded the files. Several members of the House Redistricting Committee asked Representative Lewis to have the General Assembly’s IT staff investigate whether anyone using the General Assembly’s network clicked on the link in the email from Legislative Defendants’ counsel, and Representative Lewis pledged that he would have the IT staff conduct such an investigation. 9/10/19 House Comm. Tr. at 81:1-82:18. But, to Plaintiffs’ knowledge, Representative Lewis never reported back whether IT conducted such an investigation and if so what it found.¹

Legislative Defendants’ failure to conduct such an inquiry is particularly troubling because their counsel failed to take prompt action to prevent recipients of the email from accessing the files. Legislative Defendants’ counsel sent the email containing the link at 4:24 p.m. on September 9. Ex. D (9/9/19 4:24 PM email from Riggins). Twenty minutes later, Plaintiffs’ counsel replied all to the same email thread notifying all recipients (including all

¹ The findings of any such investigation would not have been conclusive in any event, since the email containing the link could have been forwarded and anyone could have clicked on the link and downloaded the files from a network outside of the General Assembly.

members of the House Redistricting Committee) that the files contained partisanship data and should not have been sent. *Id.* (9/9/19 4:45 PM email from Jones). When Plaintiffs’ counsel did not hear back right away, Plaintiffs’ counsel sent another email 15 minutes later asking Legislative Defendants’ counsel to confirm they had removed all of the files from the link. Ex. E (9/9/19 4:59 PM email from Jacobson). Legislative Defendants’ counsel did not respond until over two hours later, at 7:09 p.m., indicating only then that the link was disabled. Ex. D (9/9/19 7:09 PM email from Riggins). Thus, there was a nearly three-hour window between the time when Legislative Defendants’ counsel transmitted the link to the partisanship data and when counsel stated that the link was no longer active.

No one, including this Court, has any way of knowing which recipients of the email from Legislative Defendants’ counsel downloaded the files and accessed the comprehensive partisanship data collected there about Dr. Chen’s simulated maps. And of course, Legislative Defendants, their counsel, and all of their consultants and experts have had unfettered access to the backup files showing the partisanship of every district in Dr. Chen’s simulated maps since April 8, when Dr. Chen submitted his opening expert report and accompanying backup files.

C. Legislative Defendants’ Counsel and the House Redistricting Committee Likely Gather and Analyze Partisanship Data on Dr. Chen’s House Maps

Even beyond the likelihood that individual members of the House Redistricting Committee downloaded and accessed partisanship data on Dr. Chen’s simulated maps, there is reason to believe that Legislative Defendants’ counsel and their experts analyzed partisanship data on Dr. Chen’s House maps and used it to guide the House redistricting process.

As mentioned, on the first day of public hearings, legislative staff asked Plaintiffs’ counsel to send the shapefiles, block assignment files, and an Excel spreadsheet for Dr. Chen’s maps. Dr. Chen proceeded to assemble this large volume of data, and Plaintiffs’ counsel

transmitted the requested materials to legislative staff and Committee members late at night after the first day of hearings.

Whereas the Senate Committee promptly began the process of picking base maps from Dr. Chen’s simulations the morning after Plaintiffs’ counsel transmitted the necessary data, the House Committee did not. Rather, on September 10 at the first House Committee hearing after receiving the data, Representative Lewis announced that “the defendants’ counsel have asked for a chance to review” the data sent by Plaintiffs’ counsel to purportedly “make sure, indeed, that this is the same information that was before the Court.” 9/10/19 House Comm. Tr. at 4:19-22. Representative Lewis did not explain what exactly Legislative Defendants’ “review” would entail. Representative Lewis also did not disclose that Legislative Defendants’ counsel were having two outside experts—including a political consultant named Clark Bensen who has previously assisted Legislative Defendants in gerrymandering districts in North Carolina—conduct this review of Dr. Chen’s maps and data. *See* Leg. Defs. Br. at 27.

It was not until late in the evening on Wednesday, September 11—nearly two full business days after the House Committee received Dr. Chen’s maps and data from Plaintiffs’ counsel—that the House Committee re-commenced its process. Legislative Defendants now say that their outside counsel and consultants were ensuring the “accuracy and authenticity” of the data that Plaintiffs’ counsel had sent. Leg. Defs. Br. at 27. But Legislative Defendants have not explained how this review was conducted, let alone why their counsel and consultants needed nearly two full days to conduct this purported review.

It appears likely that Legislative Defendants’ counsel or their consultants were instead organizing and/or reviewing partisanship data on Dr. Chen’s simulated House maps during this two-day period. When Plaintiffs’ counsel sent Dr. Chen’s maps and data to the House and

Senate Committees, Plaintiffs’ counsel noted in the transmission email that, because Legislative Defendants’ counsel had improperly sent the backup files containing partisanship data, Dr. Chen had relabeled the numbers for his 4,000 statewide plans; *e.g.*, he may have changed the map originally labeled “Map 1” to “Map 376.” But, unfortunately, this measure could not have prevented Legislative Defendants’ counsel or their experts from matching the new map numbers to the old ones. For instance, in the Excel spreadsheet he provided, Dr. Chen reported the statewide Polsby-Popper and Reock compactness scores for each of his 4,000 statewide plans. In his April 8 backup files, Dr. Chen had provided those same Polsby-Popper and Reock scores for each of the 4,000 plans. Hence, Legislative Defendants’ counsel or their experts would have needed only to identify the old and new map numbers that had the same compactness scores to know which old map number corresponded to which new number. There are many other ways Legislative Defendants’ counsel or their experts could have matched up the maps as well during their two-day review.

In addition, during this two-day gap, Legislative Defendants’ outside counsel and consultants may have been comparing the partisanship of the top 5 unique maps in each relevant House grouping in Simulation Set 1 versus Simulation Set 2. On the first two days of the legislative hearings, Representative Lewis insisted that the House Committee would use Simulation Set 2 and not Set 1. *See, e.g.*, 9/9/19 House Comm. Tr. at 73:13-21; 9/10/19 House Comm. Tr. at 58:20-24, 61:6-14. But when the House Committee finally re-convened after Legislative Defendants’ outside counsel and consultants finished their review, Representative Lewis announced that he had changed his mind and that the House would be using Set 1 instead of Set 2. 9/11/19 House Comm. Tr. at 3:16-18. Given that Dr. Chen had listed his top 5 unique maps in each grouping in Set 1 and Set 2 in the Excel spreadsheet he provided, Legislative

Defendants’ counsel and consultants could have analyzed partisanship data for those top 5 unique maps in each grouping and concluded that Simulation Set 1 was better for House Republicans, on net. Representative Lewis’ explanation for his change of heart—that he suddenly saw merit in the arguments against Simulation Set 2—is dubious at best. *See id.*

Indeed, Legislative Defendants’ reliance on “their non-testifying expert” Clark Bensen raises enormous red flags. Mr. Bensen runs a political consulting firm known as “POLIDATA” that specializes in “collecting election data” at “multiple levels of political geography.” Ex. G. In 2011, Legislative Defendants relied on Mr. Bensen to provide political data for them in drawing the 2011 plans. *See* Ex. H at 55-56 (Dale Oldham stating in deposition that Mr. Bensen “provided data” for use in North Carolina’s 2011 redistricting); *see also* Ex. I (additional documents produced in discovery in *Dickson* involving Mr. Bensen). Further, according to his resume, Mr. Bensen previously served as the director of “Political Analysis” for the Republican National Committee (RNC), where his duties were to “undertake the collection, compilation, systematization and analysis of politically related data.” Ex. J at 4.² Here is a biography that Mr. Bensen himself wrote describing his experience as a political consultant who specializes in analyzing elections data:

An attorney by training and a data analyst by practice, Clark Bensen has been involved in projects related to the art of politics for over thirty years. He has been involved in redistricting and census issues throughout the previous three reapportionment cycles and has developed political and census datasets for every state in the nation. His company, a demographic and political research firm, is also the publisher of the POLIDATA ® DEMOGRAPHIC AND POLITICAL GUIDES.

As a data analyst familiar with both census and political data, he has developed countless political, demographic, and other datasets for analysis. Development of

² Mr. Bensen filed this resume in connection with his service as an expert in *Wilson v. Kasich*, No. 12-0019 (Ohio), available at <https://moritzlaw.osu.edu/electionlaw/litigation/documents/volume7.pdf/>.

election datasets for every level of geography has been a specialty since 1974. For several projects he has been responsible for the establishment of a nationwide database of demographic and political information. Development of block-level datasets with combined census information and estimated political data are the key elements for many analyses related to districting and voting rights litigation.

Clark Bensen has been actively involved in elective politics for the past three decades. His participation has included service at every level of local, state and national politics, moving to Washington following the 1980 elections. He focuses on database development, analysis, and publication while developing political and census datasets for political stakeholders, the press, and academics as well as providing litigation support for politically-related legal actions.

Ex. J at 17.

The notion that Mr. Bensen was not conducting partisanship analysis for Legislative Defendants and their counsel during the remedial process is not credible.

D. House Incumbents Draw Their Own Districts

After the House and Senate Committees picked base maps from Dr. Chen's simulations, each Committee began amending its base for the ostensible purpose of unpairing incumbents. The entire framework of selecting a base map from Dr. Chen's simulations that paired incumbents and then allowing the incumbents to manually unpair themselves was ill-conceived, *see infra*, but the process was far worse in the House than in the Senate. In the Senate, only two of the seven Senate groupings required unpairing incumbents, and for those two groupings, legislators at least worked together on a bipartisan consensus basis to achieve the unpairing. Moreover, while Senator Hise improperly ejected the public and the press from the mapmaking area in the Senate Committee room while incumbents were developing their amendments, the Senate Committee room was at least small enough that the public in the back of the room could hear most of the discussions amongst the legislators.

That was not true in the House, which carried out the incumbency protection process very differently. In the House, for each county grouping, Representative Lewis called up to the

mapmaking computer terminal the incumbents who lived in that particular grouping, and he allowed those incumbents to redraw the districts to unpair themselves. In other words, incumbents got to pick and choose how they wanted to amend their own districts from the base map, ostensibly in the name of unpairing themselves but in many cases for obvious partisan purposes. *See infra*. Making matters worse, the incumbents made these changes largely outside of public earshot and without explaining each change that was being made. The House Committee room is much larger than the Senate Committee room, and the mapmaking terminals were at the front of the room several hundred feet away from where the public could sit in the back. And the audio of the computer terminal on the live feed was often difficult or impossible to hear. Thus, while the public could see House districts lines being moved on the screen, it could not hear the hushed discussions amongst incumbent legislators—who were huddled around the computer terminal—as those legislators were moving the boundaries of their own districts.

E. The House Map Passes on a Party-Line Vote

The material differences between the House and Senate processes were apparent to legislators and reflected in the final roll call votes. While a number of Democrats voted for the Proposed Senate Plan, every Democrat in both chambers voted against the Proposed House Plan. The Proposed House Plan thus passed both chambers on straight party-line votes.

Legislative Defendants misleadingly quote several statements from Democratic Senators as support for their erroneous assertion that the process used by both chambers “received the support of Democratic members.” *Legs. Defs. Br.* at 5. All of the quotes reproduced in Legislative Defendants’ brief related solely to the Senate’s process and not the House. Democrats in both chambers consistently expressed opposition to the House Committee’s process, actions, and ultimately the House map.

Legislative Defendants also erroneously suggest that Democrats opposed only one particular House grouping (the Columbus-Pender-Robeson grouping). Legislative Defendants assert that, for every other House grouping, the House Committee “adopted the map” unanimously. *See* Leg Defs. Br. at 17-20. What actually happened was that, within minutes of the incumbents of each grouping revising their districts from the base map, Representative Lewis asked whether any Committee members wanted to voice objections. *See, e.g.*, 9/12/19 House Comm. Tr. at 34:6-15. This request was made before Committee members even had any time to closely review the revisions from the base map. When the House later called a separate vote on all of the House groupings other than Columbus-Pender-Robeson, all but eight House Democrats voted against it. 9/13/19 House Floor Sess. at 591:1-12.

ARGUMENT

I. The House’s Process Violated the Court’s Decree

The House’s remedial mapmaking process violated this Court’s Decree in a host of ways. The violations include that: the House Committee enlisted Legislative Defendants’ outside counsel and consultants to assist in the mapmaking process, without securing Court approval and outside of public view; Legislative Defendants provided partisanship data on Dr. Chen’s simulated maps to House Committee members; House incumbents sought to preserve “communities of interest,” a criterion not permitted by the Court; and House incumbents ignored compactness in amending the maps to protect themselves.

A. Legislative Defendants Improperly Provided Partisanship Data to House Members and Relied on Outside Counsel with Access to Partisanship Data

1. The House Committee violated this Court’s Decree by having Legislative Defendants’ outside counsel and consulting experts assist in the House’s remedial process. This Court directed that, “[t]o the extent that Legislative Defendants wish to retain one or more

individuals who are not current legislative employees to assist in the map-drawing process, Legislative Defendants must seek and obtain prior approval from the Court to engage any such individuals.” Decree ¶ 9. The Court further provided that “Legislative Defendants *and their agents* shall conduct the *entire remedial process* in full public view.” *Id.* ¶ 8 (emphases added).

The House Committee violated both of these provisions in having Legislative Defendants’ outside counsel and consultants conduct a secret two-day review of the maps and Excel spreadsheet that Dr. Chen provided. Legislative Defendants’ outside counsel and consultants are not “current legislative employees,” and the Court did not authorize these attorneys and consultants to assist the House Redistricting Committee in its remedial process. Legislative Defendants’ outside counsel and consultants, moreover, conducted their two-day analysis of Dr. Chen’s maps and data outside of “public view,” even though they are “agents” of Legislative Defendants subject to the Court’s Decree.³ The House Committee’s reliance on Dr. Thornton and Mr. Bensen—two consultants with extensive experience sorting and analyzing elections data—is an especially flagrant violation of the Court’s order. *See* Leg. Defs. Br. at 27. Dr. Thornton analyzed the partisanship of Dr. Chen’s maps for her expert report, LDTX286 at 30-33, and Mr. Bensen is a political consultant who specializes in analyzing political data, including for use in redistricting generally and for redistricting in North Carolina specifically. Indeed, in 2011, Mr. Bensen provided granular North Carolina elections data to Legislative Defendants to help them draw the 2011 Plans. *See* Exs. H, I. Had Legislative Defendants sought

³ As described previously, unlike the House Committee, the Senate Committee did not have outside counsel or consultants review Dr. Chen’s data to purportedly ensure it was “accurate and authentic” before picking a base map. Legs. Defs. Br. at 26. Instead, the Senate Committee immediately began the process of picking a base map the morning after Plaintiffs’ counsel transmitted Dr. Chen’s maps and data. That the Senate Committee did not need outside counsel or consultants to “review” the data only further calls into question the House Committee’s actions.

the Court’s permission to have Mr. Bensen and Dr. Thornton assist in the remedial process, as was required by the Court’s Decree, Plaintiffs would have vigorously opposed the request.

The House Committee’s violations of the Court’s Decree are all the more troubling given that Legislative Defendants’ outside counsel and consultants have had access to partisanship data on all of Dr. Chen’s maps since April 8. As already explained, there are strong indications that counsel and/or the consultants did assemble and analyze partisanship data on the maps, and the mere fact that this Court cannot be certain such did not occur casts an enormous shadow over the House’s process and final maps. But in any event, the work performed by Legislative Defendants’ outside counsel and consultants during the remedial process violates the Court’s Decree no matter the nature of the work, since that work was done outside of “public view” and without approval of the Court. *See* Decree ¶¶ 8, 9.

2. Legislative Defendants independently violated the Court’s order that “election results data shall not be used in the drawing of legislative districts in the Remedial Maps,” Judgment COL ¶ 169, by transmitting “elections data” for each of Dr. Chen’s maps to all House Committee members and several political staffers for Representative Lewis on the very first day of hearings. Legislative Defendants will likely claim that there is no direct proof that any recipients of the email downloaded and used the elections data. But Legislative Defendants appear to have not investigated that question and they have provided no accounting to the Court of who accessed the link. The fact that this Court has no way of knowing one way or the other whether House members or staff accessed the data suffices to find a violation of the Court’s order. And it provides reason to reject any House grouping where House incumbents exercised significant discretion in amending (or choosing not to amend) the base map.

B. The House’s Incumbency Protection Process Violated Multiple Aspects of the Court’s Judgment and Decree

This Court ordered that “[t]he mapmakers may take reasonable efforts to not pair incumbents unduly in the same election district.” Decree ¶ 5(g). The House’s efforts to avoid pairing incumbents were not “reasonable.”

The House’s entire approach to incumbency protection—*i.e.*, starting with one of Dr. Chen’s maps that paired incumbents and then allowing incumbents to manually unpair themselves—was unreasonable. If Legislative Defendants wanted to use one of Dr. Chen’s maps but also to avoid pairing the current incumbents, they could have simply asked Dr. Chen to run a new version of his Simulation Set 2 that avoided pairing the current incumbents (Dr. Chen’s Simulation Set 2 avoided pairing the incumbents in office in 2011 or 2017 when the relevant districts were drawn). That would have been straightforward—Dr. Chen has now done so for the five House groupings described in detail below—and it would have allowed for a set of non-partisan simulated maps in which incumbency protection did not subordinate traditional districting criteria and could not be manipulated for partisan gain. Representative Lewis acknowledged on the second day of hearings that this “idea has been floated.” 9/10/19 House Comm. Tr. at 62:13-17; *cf.* 9/17/19 Senate Comm. Tr. at 21:25-22:1 (Representative Lewis claiming, “I don’t think anyone in the House Committee suggested a Chen Set 3” along these lines).

The House instead started with maps that paired incumbents and had the incumbents contort the district lines to unpair themselves, guaranteeing that the compactness of many groupings would be mangled. This process also opened the door to partisan manipulation, especially because the House entrusted the incumbents from each grouping to amend their own

districts rather than having the whole House Committee perform the unpairing. The House’s process took the notion of having “representatives choose their own voters” to the extreme.

As no surprise given this fatally flawed process, the House’s incumbency protection efforts led to multiple violations of the Court’s Decree. In addition to improperly pursuing partisan goals in the specific House groupings described in the section to follow, the House’s incumbency protection efforts violated the following aspects of the Court’s order.

1. The House improperly sought to preserve “communities of interest” in amending the base map. Legislative Defendants explicitly state in their September 23 filing that House Committee made changes to the base map not “simply to unpair incumbents,” but also “to preserve communities of interest.” Leg. Defs. Br. at 16. Representative Hall, the Chair of the House Committee, stated the same after the House’s revisions to the base map were complete. He told the Senate Committee that House incumbents “knew their areas as to where particular neighborhoods are and communities of interest,” and took this into account in revising their districts. 9/17/19 Senate Comm. Tr. at 17:6-18:3. This violates the Court’s Decree. The Court directed that the criteria set forth in Paragraph 5 of its Decree “shall *exclusively* govern the redrawing of districts in the House and Senate.” Decree ¶ 5 (emphasis added). Preserving communities of interest is not one of the exclusive criteria that the Court permitted the House to apply. Indeed, this Court noted in its judgment that “Legislative Defendants expressly declined to include ‘communities of interest’ as a criterion for the 2017 Plans,” Judgment FOF ¶ 200, and the Court did not include communities of interest as a criterion for the remedial process for this reason.

As documented further below, it is apparent that in some cases the House used “communities of interest” as a smokescreen for reverting to the invalidated districts and/or

putting incumbents into more politically favorable districts. But regardless, given that the House by its own admission applied a criterion that the Court did not permit, the House’s process on its face violates the Court’s order.

2. The House entirely ignored compactness in protecting incumbents. There was little, if any, mention of compactness throughout the process of revising the House groupings from the base map. And there were never any calculations presented in the House as to how the revisions to a grouping from the base map affected the compactness scores for that grouping.

As a result, the House subordinated compactness just like it did in the 2017 House Plan. In striking down the 2017 House Plan, this Court credited Dr. Chen’s finding that the 2017 House Plan “subordinate[d] the traditional districting criterion of compactness” and produced districts that were “less compact than they would be under a map-drawing process that prioritizes and follows the traditional districting criteria.” Judgment FOF ¶ 93. Dr. Chen reached this conclusion after finding that the 2017 House Plan was less compact than all 2,000 of his House plans in Simulation Set 1 and Simulation Set 2. Remarkably, the same is true of the new Proposed House Plan. Dr. Chen compared the compactness of the 14 House groupings that this Court ordered to be redrawn to those same 14 groupings in his House Simulations Set 1 and 2. Dr. Chen found that, across these 14 groupings, the Proposed House Plan has a lower Polsby-Popper score than all 2,000 plans in both House Simulation 1 and House Simulation 2, and has a lower Reock score than the overwhelming majority of the simulated plans as well. Chen 9/27 Report at 63-66. If the 2017 House Plan improperly subordinated compactness, then the Proposed House Plan necessarily does as well.

In the event that Legislative Defendants argue that the Proposed House Plan is good enough on compactness because it is more compact than the 2011 Plan that preceded the 2017

Plan, this Court should reject that argument for the same reasons it did at trial. This Court held that “Dr. Chen’s interpretation and application” of the compactness criterion in the 2017 Adopted Criteria—that all else being equal, more compact districts are preferable to less compact districts—“is fully consistent with the guidance provided by Legislative Defendants at the time of the 2017 redistricting.” Judgment FOF ¶ 142; *see* Trial Tr. at 257:14-18. This Court rejected Legislative Defendants’ argument that the Adopted Criteria meant that the General Assembly should seek only to meet some minimum compactness threshold tied to the 2011 Plans but do no better. Judgment FOF ¶¶ 142, 143. The House was on full notice of the proper application of the compactness requirement in this Court’s Decree and simply ignored it.

All of the above violations of the Court’s Decree led to a Proposed House Map that is an extreme partisan outlier. As Dr. Chen details in his attached report and is shown below, based on the ten statewide elections from 2010-2016 that Dr. Chen used to assess partisanship, the Proposed House Map produces more Republican-leaning seats than nearly 95% of Dr. Chen’s House Simulation Set 1 plan and nearly 98% of Dr. Chen’s House Simulation Set 2 plans.⁴ Chen 9/27 Report at 2-4 (Figures 1 and 2).

⁴ In contrast, the Proposed Senate Plan is not at outlier relative to the distribution of Dr. Chen’s simulated Senate plans, although it is at the more Republican-favorable end of the distribution. Chen 9/27 Report at 2, 5-6.

Figure 1:
House Simulation Set 1 (Following Only Non-Partisan Redistricting Criteria):
Democratic-Favoring Districts in HB 1020 House Plan Versus 1,000 Simulated Plans
(Measured Using 2010–2016 Election Composite)

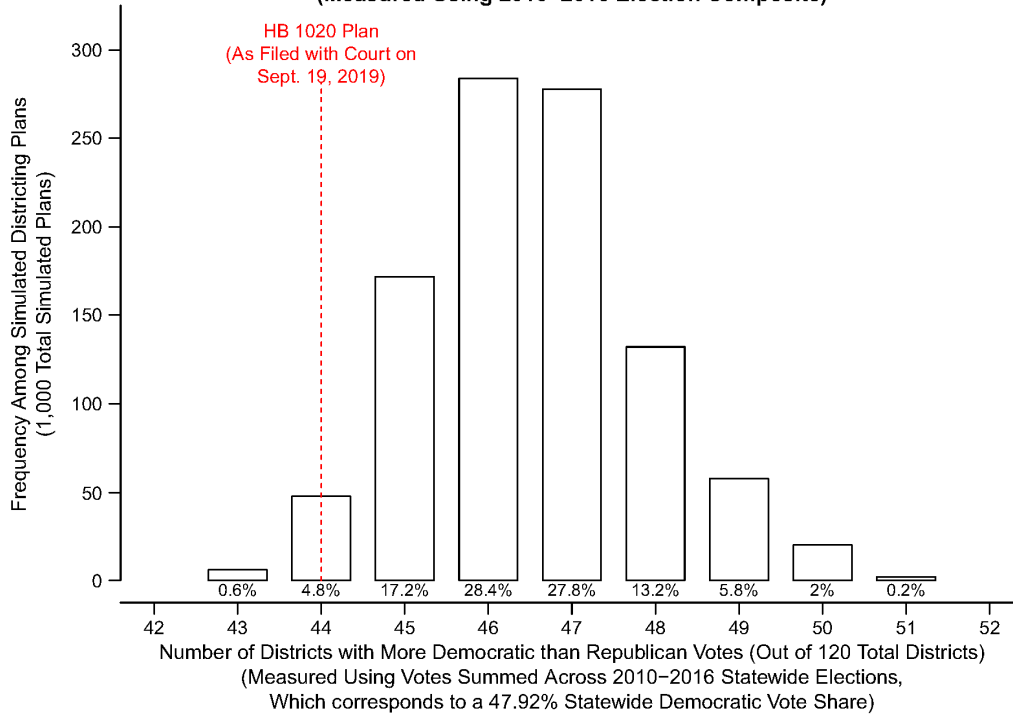
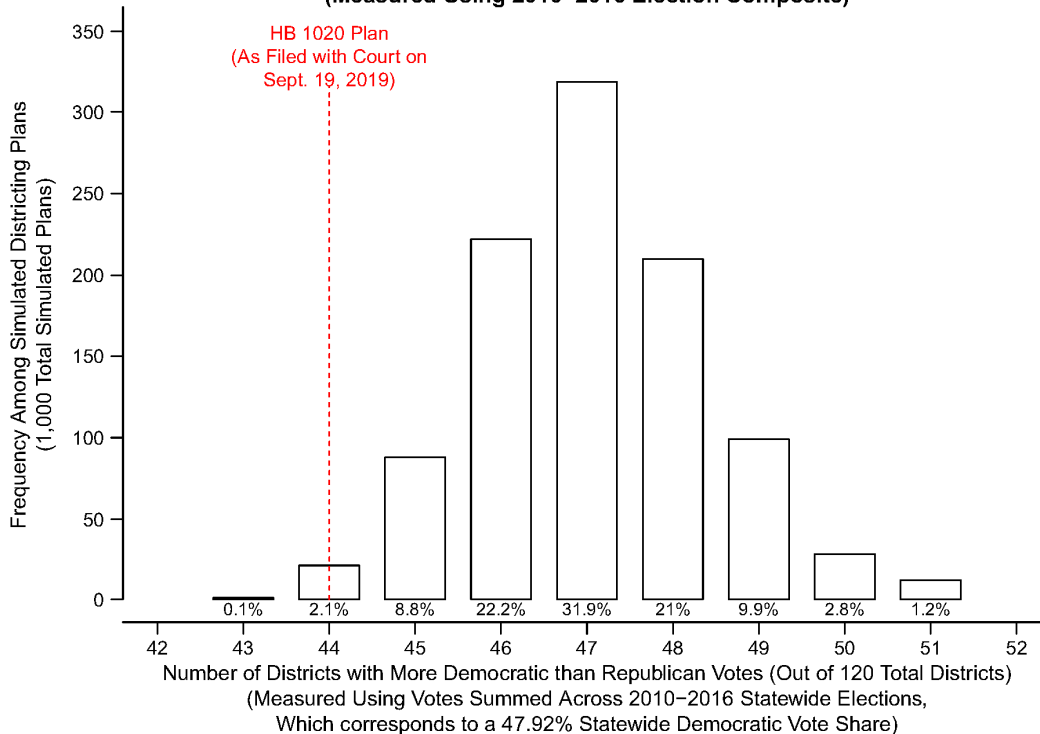


Figure 2:
House Simulation Set 2 (Following Non-Partisan Redistricting Criteria and Avoiding Incumbent Pairings):
Democratic-Favoring Districts in HB 1020 House Plan Versus 1,000 Simulated Plans
(Measured Using 2010–2016 Election Composite)



The 2017 House Plan was “an extreme partisan outlier,” Judgment FOF ¶ 102, and that continues to be the case with the Proposed House Plan. The Proposed House Plan cannot stand in its current form.

II. The Court Should Reject Five House Groupings in the Proposed House Plan

For all of the reasons provided above, the Court would be justified in rejecting the entire House Plan. However, to limit the scope of relief sought and facilitate the expeditious adoption of final plans, Plaintiffs focus their objections on the specific House groupings where the above process violations had the most significant substantive effects. Specifically, Plaintiffs focus on the five House groupings where the House’s incumbency protection process was carried out with clear partisan intent, significantly subordinated traditional districting criteria, and/or improperly reverted to the prior 2017 version of districts with the grouping. These five House groupings are: (1) Columbus-Pender-Robeson; (2) Forsyth-Yadkin; (3) Gaston-Cleveland; (4) Brunswick-New Hanover; and (5) Guilford.

To aid the Court’s evaluation of these groupings, Dr. Chen created a new Simulation Set 3 for these five groupings that avoided pairing the current incumbents in office. Dr. Chen’s Simulation Set 3 is identical to his Simulation Set 2 in all respects except Set 3 avoids pairing the current incumbents rather than the incumbents in office in 2011 or 2017. Chen 9/27 Report at 1. Dr. Chen finds that, in four of the five groupings, the Proposed House Plan is an extreme partisan outlier relative to the districts in his Simulation Set 3. In other words, the Proposed House Map in these four groupings is an extreme partisan outlier—in three of the groupings, an over 99% outlier—relative to the possible configurations of the grouping that would emerge under a non-partisan process that applied the traditional districting criteria and avoided pairing the current incumbents. In Guilford County, the only of the five groupings that is not a partisan outlier, the

Proposed House Plan significantly subordinates compactness and creates one district (HD 58) that is nearly identical to the invalidated 2017 version of that district.

A. Columbus-Pender-Robeson

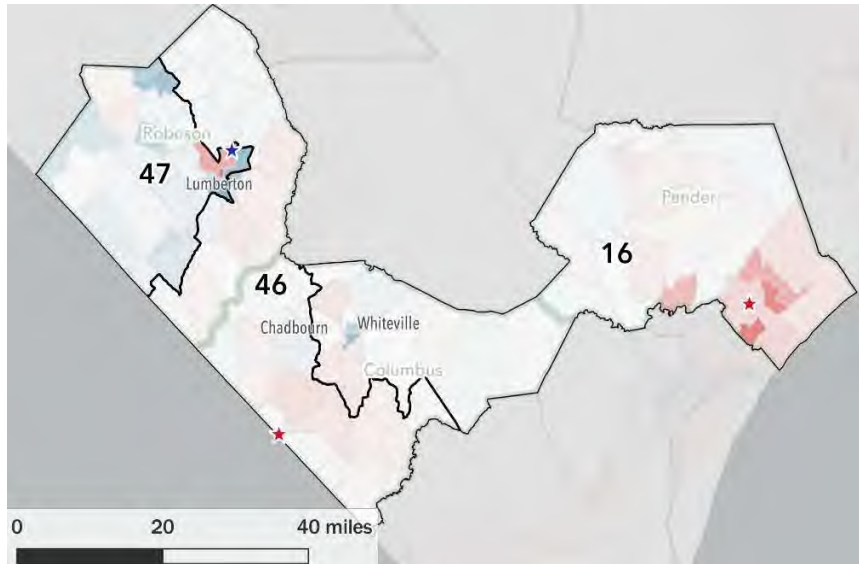
In finding that the 2017 version of this county grouping was an “extreme partisan gerrymander,” this Court gave “weight to the analysis of Plaintiffs’ experts.” Judgment FOF ¶ 333. Plaintiffs’ expert Dr. Cooper had explained that the 2017 map not only packed Democratic voters in Robeson County into House District 47, but also cracked Democratic voters in Columbus County across House Districts 46 and 16. In particular, Dr. Cooper explained that “the Democratic areas of Chadbourne [were] cracked from the Democratic voters in and around Whiteville, helping to ensure that neither HD-46 nor HD-16 would elect a Democrat.” PX253 at 70 (Cooper Report). This Court highlighted this cracking in its opinion. The Court held that “Legislative Defendants cracked African American voters” in groupings including Columbus-Pender-Robeson “where cracking Democratic voters would maximize Republican victories.” Judgment FOF ¶¶ 688-69. Chadbourn, Whiteville, and their surrounding communities are the heavily African-American areas of Columbus County that the 2017 House Plan cracked.

The base map that Legislative Defendants selected from Dr. Chen’s simulations cured this cracking, as it kept Whiteville, Chadbourn, and their immediately surrounding areas together in House District 46. But the Republican incumbents in this grouping proceeded to reinstate the prior gerrymander. While the base map paired Republican incumbents Jones and Smith in House District 16, Jones lives in a VTD on the border with House District 46, which had no incumbent under the base map, meaning that unpairing him should not have been difficult. Rather than make minimal, non-partisan changes to unpair the two incumbents, the incumbents swapped a total of 11 VTDs between District 16 and 46 in a blatant effort to make District 46

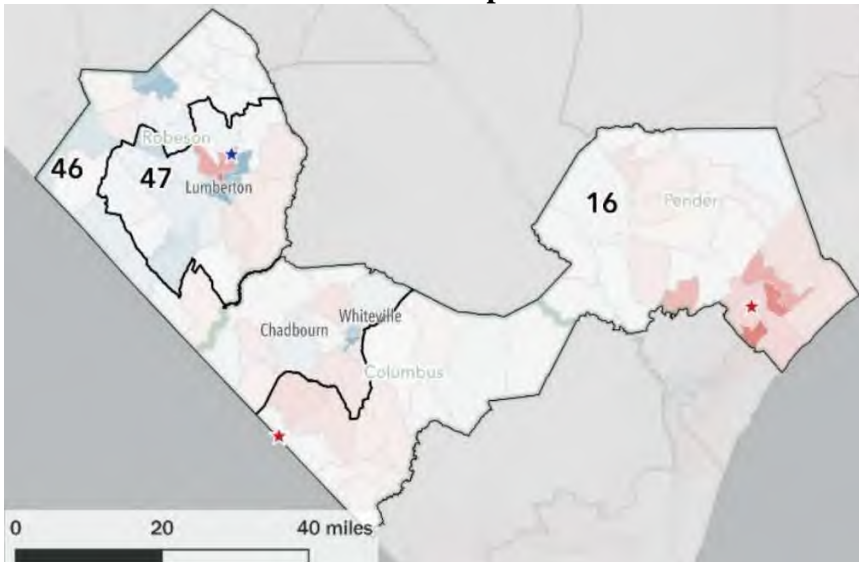
more favorable for Republicans. The amended map again cracks the Democratic voters of Columbus County, again separating the VTDs in and around Whiteville and Chadbourn.

The below maps show the 2017 House Plan’s version of this grouping, the base map, and the amended Proposed House Plan for this grouping. In these maps and all to follow, the color-coding of VTDs represents the Democratic or Republican vote margin in the 2016 Attorney General race, implemented the same way as in Dr. Cooper’s opening expert report. The blue star represents the home address of the Democratic incumbents and the red stars represent the home addresses of the Republican incumbents.

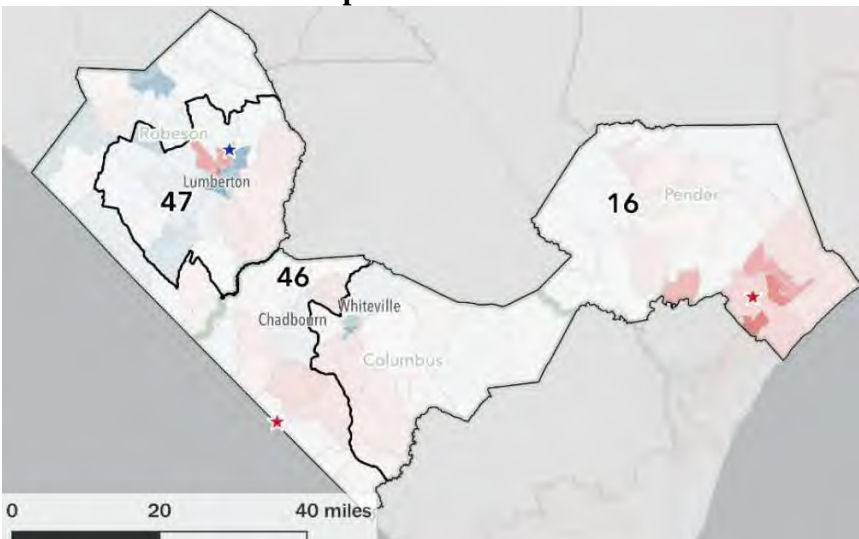
– 721 –
2017 House Plan



Base Map

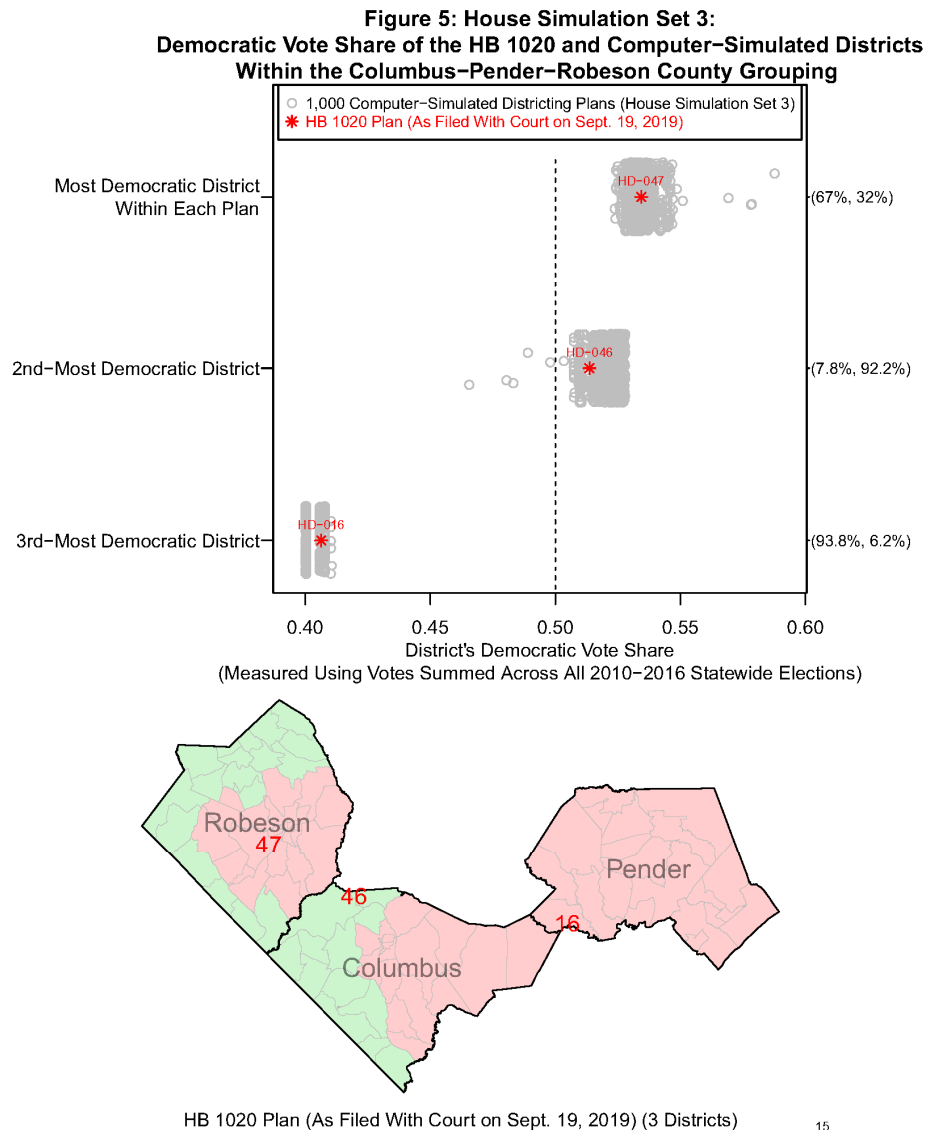


Proposed House Plan



The revisions to the base map cracking Columbus County’s Democratic voters anew have significant partisan effects. The revisions made House District 46 roughly two points more Republican than the base map, while House District 16 remained a safe Republican seat despite adding more Democratic voters. Chen 9/27 Report at 13 (Table 2a).

This cracking also rendered House District 46 an extreme outlier relative to the versions of the district found in Dr. Chen’s Simulation Set 3. As shown below and in Dr. Chen’s report, the Proposed House Plan’s version of House District 46 is less Democratic than its corresponding district in over 92% of plans in Dr. Chen’s Simulation Set 3.



None of Legislative Defendants’ explanations for the amendments that were made to this grouping withstand scrutiny. Legislative Defendants appear to suggest that the amendments were made to preserve communities of interest, as they note that members of the public from Columbus County “expressed the view that Columbus County should be kept as whole as possible.” Leg. Def. Br. at 20-21. Communities of interest is not a permissible criterion under the Court’s Decree, and this explanation does not make sense anyway. Due to the county traversal rule, this grouping necessarily must split Columbus County between House District 46 and House District 16. No configuration of this grouping can keep Columbus County more “whole” than any other. Legislative Defendants also note that the Proposed House Plan does not pair the incumbents in this grouping, but Representative Darren Jackson proposed two different amendments that would have unpaired the incumbents while making fewer changes to the base map, and Republicans rejected these amendments on a party-line vote. 9/13/19 House Floor Sess. at 539:14-552:4. Dr. Chen’s Simulation Set 3 also establishes that there are numerous configurations of this grouping that would avoid pairing the current incumbents.⁵ The House Committee clearly acted with impermissible partisan intent in revising this country grouping.

B. Forsyth-Yadkin

This Court found that the 2017 House Plan version of the Forsyth-Yadkin grouping unlawfully “packed Democratic voters into House Districts 71 and 72” and “then cracked the remaining Democratic voters in this grouping across the remaining districts.” Judgment FOF ¶ 405. The Court explained that, “in order to join Republican VTDs, House District 75 traverse[d] an extremely narrow passageway on the border of Forsyth County,” and that House

⁵ Dr. Chen also found that all of his Set 3 simulations for this grouping avoid splitting any VTDs and most do not split any municipalities either. Chen 9/27 Report at 19-20. More than 40% of the simulations are equally or more compact than the Proposed House Plan using Reock, and about a third are using Polsby-Popper. *Id.* at 16-18.

District 75 also “wrap[ped] around the city [of Winston-Salem] to include Republican-dominated VTDs on either side of Forsyth County.” *Id.* The Court also relied on Dr. Chen’s findings that, compared to Simulation Set 1, “two of the districts in this grouping (House Districts 71 and 75) [were] extreme partisan outliers above the 95% level,” and that four districts were outliers above the 94% level compared to Set 2. *Id.* ¶ 409.

The incumbents in this grouping recreated the prior gerrymander and then some. The base map had paired Republican incumbent Donny Lambeth with a Democratic incumbent in southern Forsyth County. At the very onset of making revisions to the base map at the mapmaking terminal, Representative Lambeth instructed staff to “take the 75th out to Kernersville because I’ve represented it in the past.” 9/12/19 House Comm. Hr’g Video at 7:12:00-10.⁶ Representative Lambeth then reiterated a minute later in proposing a revision: “I’ve represented Kernersville in the past.” *Id.* at 7:13:50-7:13:59. The remainder of the discussion among the incumbents in this grouping is inaudible, but the incumbents from Districts 71 and 75 engaged in lengthy deliberations at the mapmaking terminal.

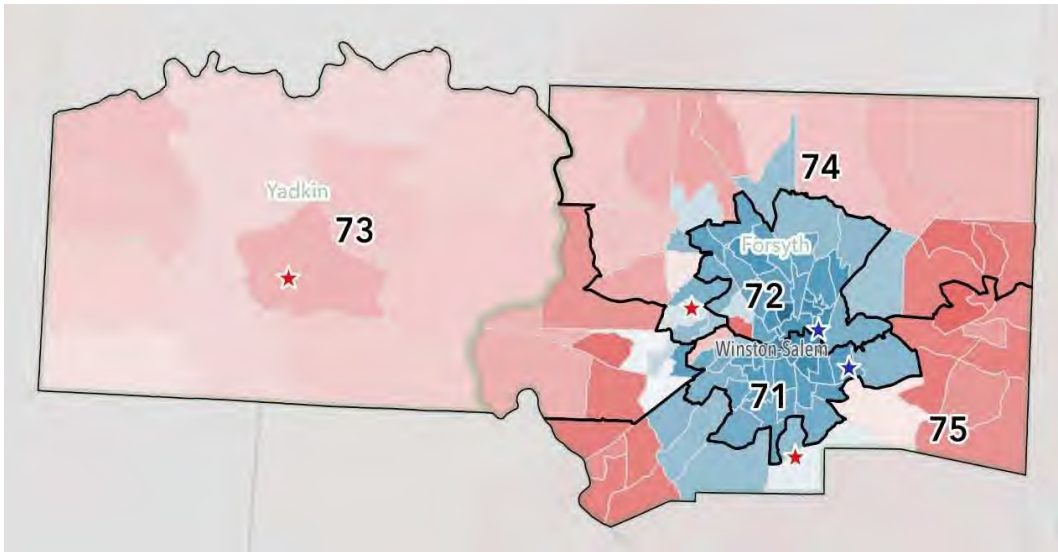
The Proposed House Plan that emerged from this process is an obvious gerrymander. In particular, in amending the base map, the boundaries of House Districts 71 and 75 were amended to pack three additional heavily Democratic VTDs into House District 71 and move the Republican incumbent Lambeth into a safe Republican district. The House recreated the specific features of the prior gerrymander of House District 75 in the process. Once again, “in order to join Republican VTDs, House District 75 traverses an extremely narrow passageway on the border of Forsyth County,” and once again, House District “wrap[s] around the city [of Winston-

⁶ Available at Redistricting 2019 Live Stream, <https://www.ncleg.gov/Video/Redistricting2019> (at “Legislative Office Building Room 643 feed). Conversations that occurred at the mapmaking do not appear on the transcripts provided by Legislative Defendants but in some instances are audible on the live stream.

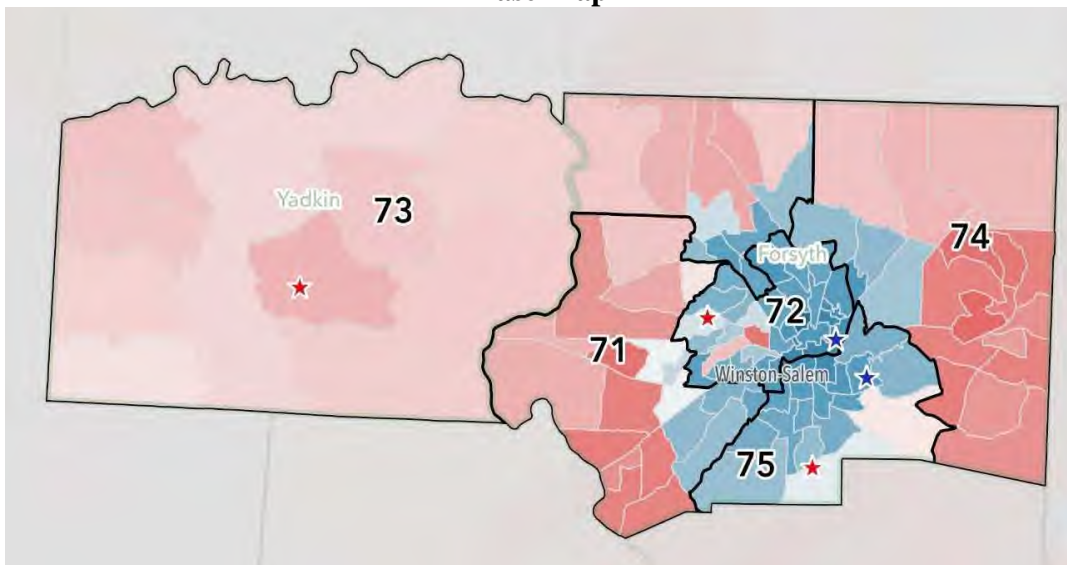
Salem] to include Republican-dominated VTDs on either side of Forsyth County.” Judgment FOF ¶ 405.

The map of the Proposed House Plan for this grouping—including the perfect division of Democratic and Republican voters on the east side of Forsyth County—lays bare the patent gerrymandering of this grouping.

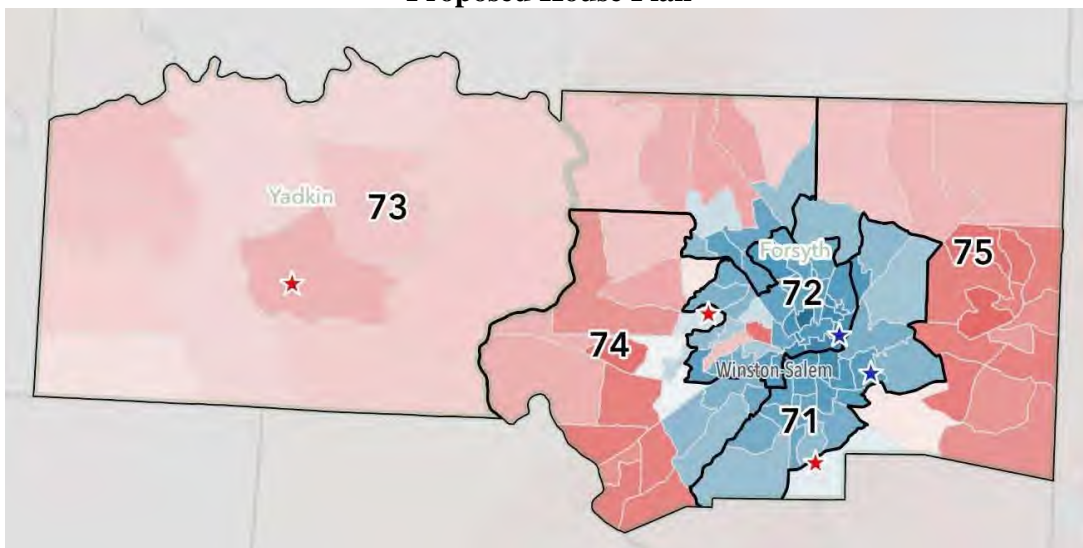
– 726 –
2017 House Plan



Base Map



Proposed House Plan



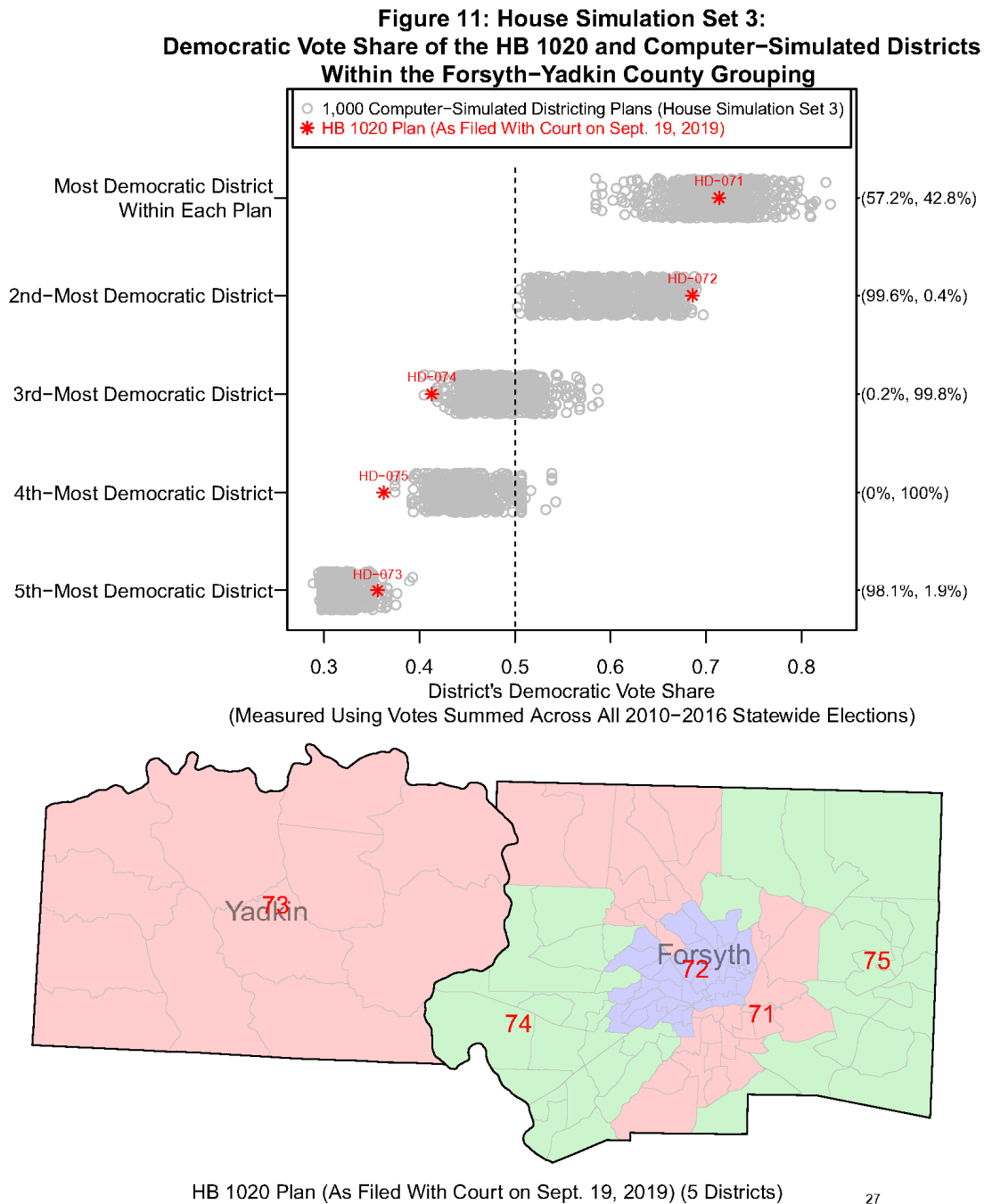
The House Committee’s amendments to the base map inured to the benefit of the incumbents in this grouping and to the Republican Party as a whole. The House Committee amended four districts in this grouping from the base map, and these amendments made the districts of all four affected incumbents more politically favorable for those incumbents than the districts in which they were placed into under the base map. Chen 9/27 Report at 23; *see also supra* (showing district of each incumbent under base map). Most notably, the amendments made House District 75 roughly 3.5 percentage points more Republican and House District 71 over two percentage points more Democratic using the 2010-2016 statewide elections. *Id.*

In making these revisions, the House explicitly violated this Court’s Decree that “the invalidated 2017 districts may not be used as a starting point for drawing new districts, and no effort may be made to preserve the cores of invalidated 2017 districts.” Decree ¶ 6.

Representative Lambeth openly stated that the revisions he was making to House District 75 were to allow him to regain areas that he has “represented it in the past,” *i.e.*, under the unconstitutional 2017 House Plan. 9/12/19 House Comm. Hr’g Video at 7:12:00-10. While the House Committee asked staff to confirm that the revisions to this grouping were “minimal changes” necessary to accommodate incumbents, 9/12/19 House Comm. Tr. at 69:7-11, even a cursory review of the base map reveals that there were several other ways to unpair the incumbents that would have moved fewer VTDs.

The end result of the gerrymandering and core retention efforts in this grouping was to produce four districts that are extreme partisan outliers compared to their corresponding districts in Dr. Chen’s Simulation Set 3. As shown below and in Dr. Chen’s report, the Proposed House Plan has four districts that are above 98% outliers compared to the Set 3 plans that also avoid pairing the current incumbents. The Proposed House Plan thus is an even more extreme

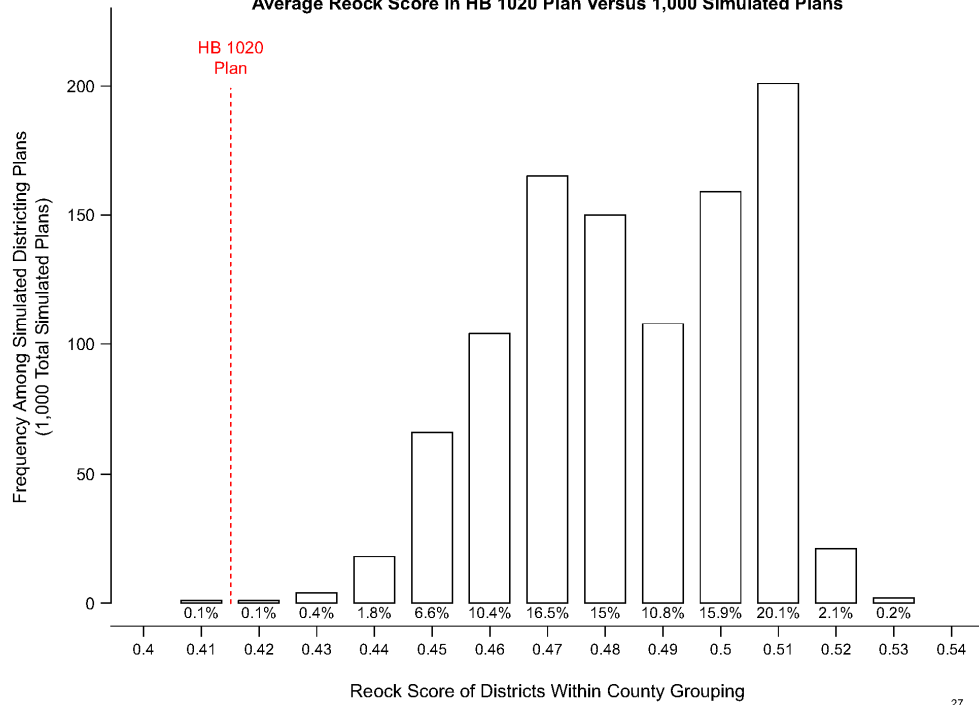
gerrymander that the unconstitutional 2017 House Plan version of this grouping, which only had one district that was above a 98% outlier compared to Set 1 and two districts that were that level of an outlier compared to Set 2. *Compare* Chen 9/27/19 Report at 26 with PX1 at 94, 112.



The House Committee significantly subordinated compactness in pursuing these partisan ends. The House’s amendments to the base map lowered the compactness of each of the four districts that were altered, and significantly lowered the compactness of the grouping as a whole. The amendments lowered the average Reock score of the grouping from 0.464 to 0.415 and lowered the average Polsby-Popper score of the grouping from 0.380 to 0.300. Chen 9/27 Report at 24 (Table 3b). The final Proposed House Plan is an extraordinary outlier in its lack of compactness compared to Dr. Chen’s Simulation Set 3. As shown below and in Dr. Chen’s report, the Proposed House Plan has a lower Reock score than 99.9% of the plans in Simulation Set 3 and a lower Polsby-Popper than over 99% of the Set 3 plans. *Id.* at 27-29 (Figures 12-14).⁷

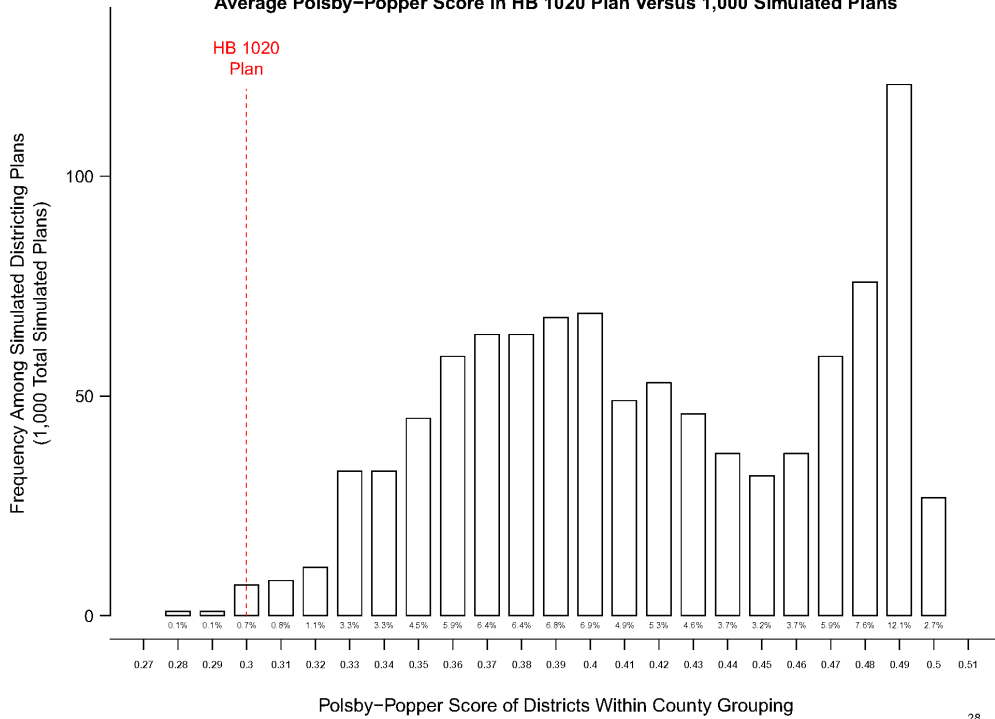
⁷ Almost all of Dr. Chen’s Simulation Set 3 plans for this grouping do not split any additional municipalities or VTDs compared to the Proposed House Plan. Chen 9/27 Report at 30-31 (Figures 15-16).

**Figure 12: Forsyth–Yadkin County Grouping:
House Simulation Set 3 (Following Non-Partisan Redistricting Criteria and Avoiding Pairing of 2019 Incumbents):
Average Reock Score in HB 1020 Plan Versus 1,000 Simulated Plans**



27

**Figure 13: Forsyth–Yadkin County Grouping:
House Simulation Set 3 (Following Non-Partisan Redistricting Criteria and Avoiding Pairing of 2019 Incumbents):
Average Polsby–Popper Score in HB 1020 Plan Versus 1,000 Simulated Plans**



28

The House also split additional municipalities to accomplish its partisan and incumbency protection objections. Whereas the base map split only Winston Salem, the Proposed House Plan additionally splits Walkertown and Kernersville. Chen 9/27 Report at 25 (Table 4). These municipalities were also split under the 2017 House Plan, *id.*, further illustrating the extent to which the House recreated the prior gerrymander.

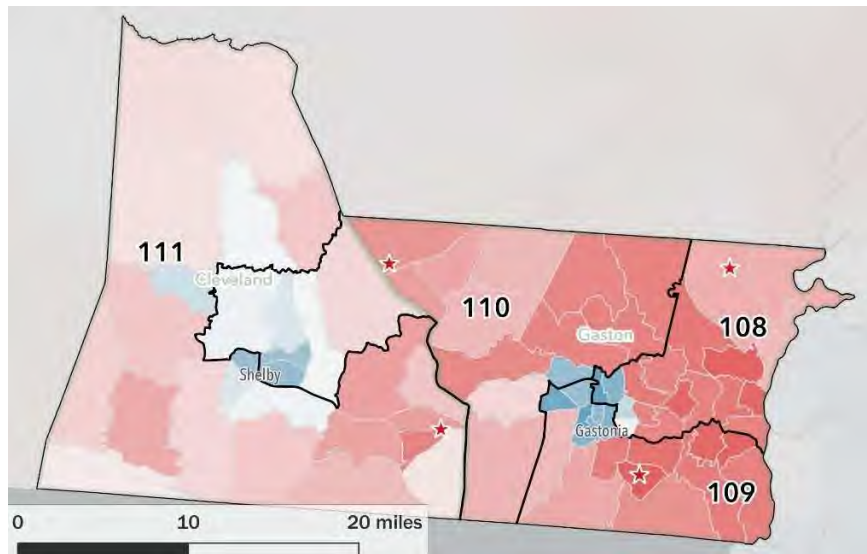
The Proposed House Plan is an extreme gerrymander that improperly seeks to retain the cores of the prior districts and subordinates traditional districting criteria, all in violation of the Court’s order.

C. Cleveland-Gaston

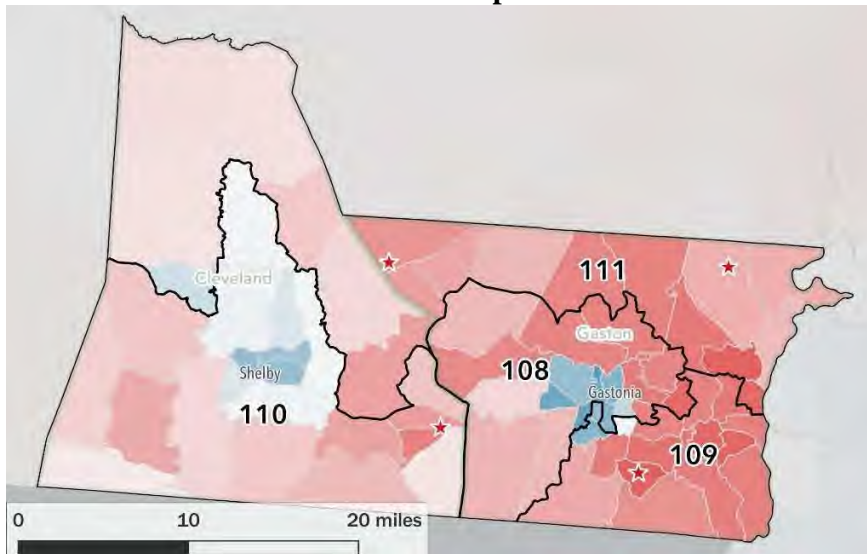
This Court described the 2017 House Plan version of the Cleveland-Gaston grouping as a “textbook example of cracking.” Judgment FOF ¶ 485. The Court explained that “[t]he Democratic voters in Gastonia [were] cracked across House Districts 108, 109, and 110,” diluting the influence of these Democratic voters. *Id.*

History repeats itself. The base map for this grouping split Gastonia across just two districts, but the Republican incumbents in this grouping substantially altered the districts to again crack Gastonia across three districts (House Districts 108, 109, and 110). The incumbents moved a total of 13 VTDs from the base plan and even split one VTD in the process—the same VTD that was split under the 2017 House Plan. Chen 9/27 Report at 37 (Table 6). The maps below demonstrate this clear return to the prior gerrymander via the cracking of Gastonia. In the second set of maps, the gold shading shows the municipal boundaries of Gastonia.

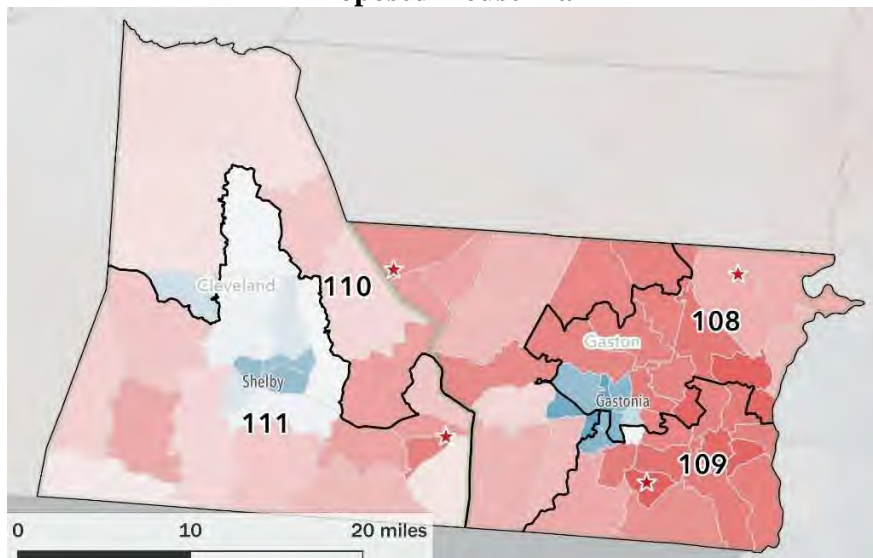
The 2017 House Plan



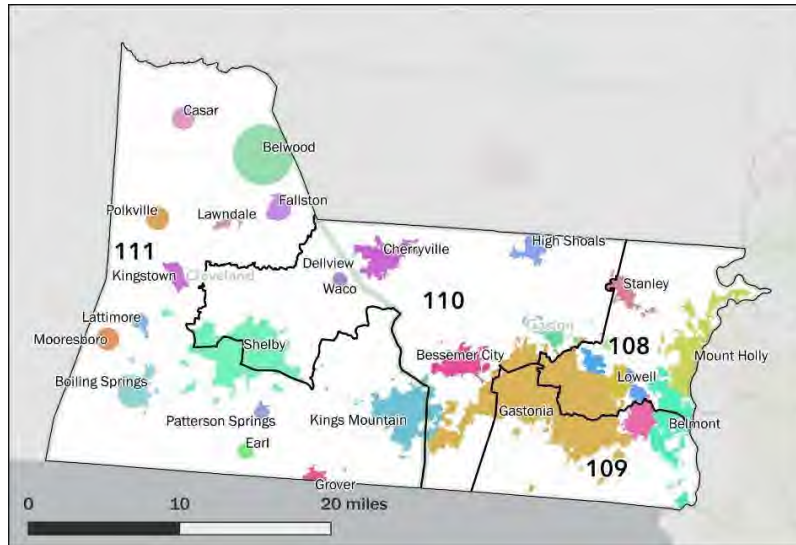
Base Map



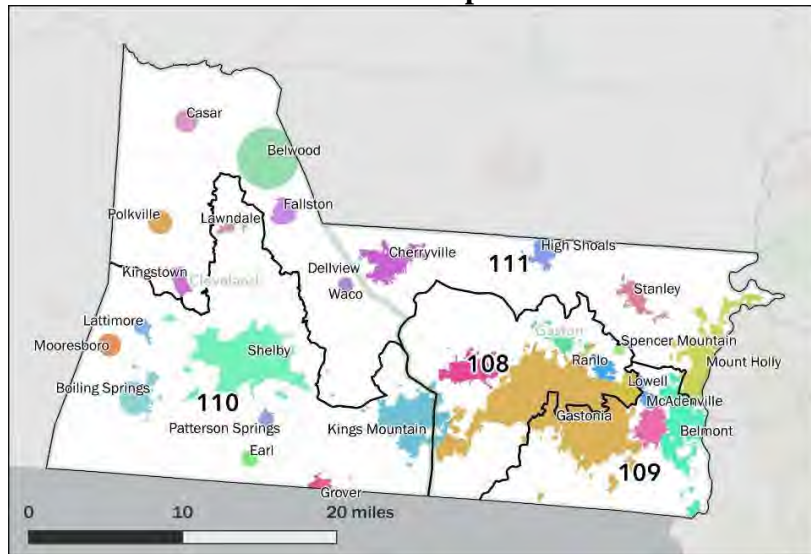
Proposed House Plan



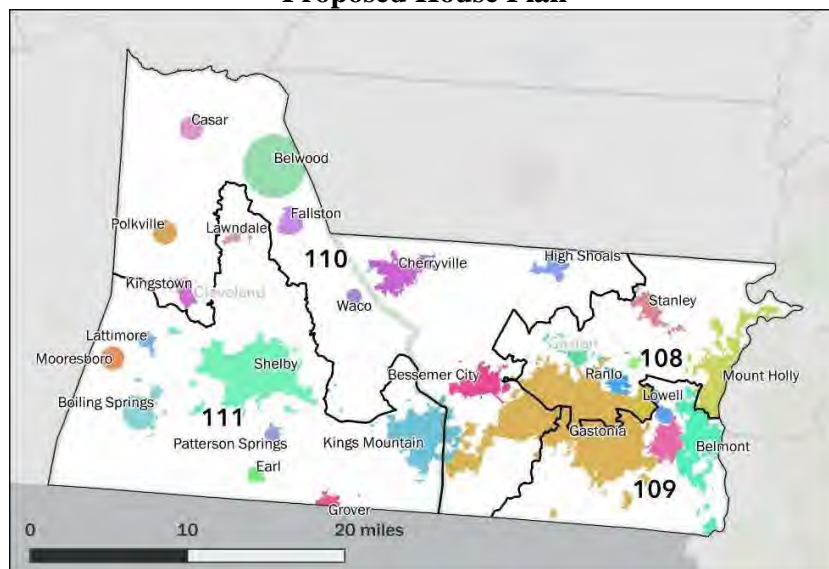
– 733 –
2017 House Plan



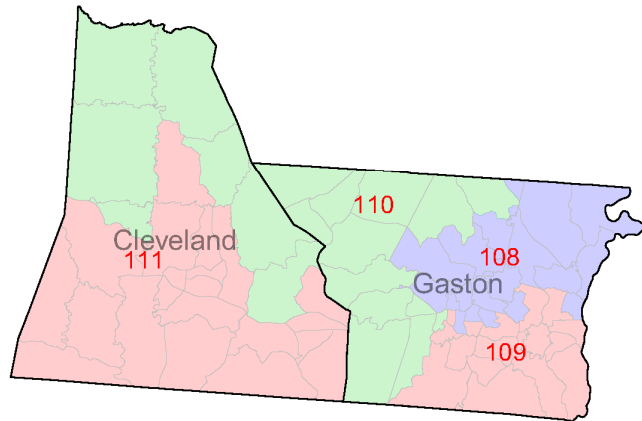
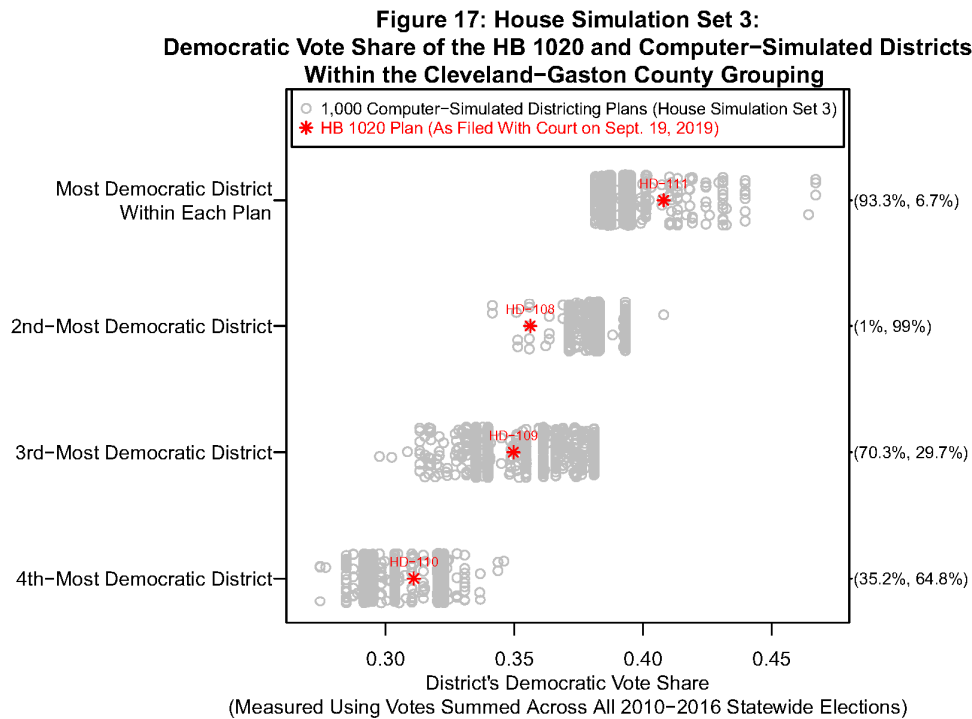
Base Map



Proposed House Plan



The incumbents’ amendments to this grouping had substantial partisan effects. The revisions caused House District 108 to become 5.62 percentage points more Republican relative to the base map using the 2010-2016 statewide elections, while House District 110 remained a safe Republican seat despite adding more Democratic voters. Chen 9/27 Report at 35 (Table 5a). Consistent with this swing, Dr. Chen finds that House District 108 is an extreme partisan outlier compared to his Simulation Set 3 plans. The Proposed House Plan’s version of District 108 is more favorable to Republicans than the corresponding district in 99% of Dr. Chen’s Set 3 plans.

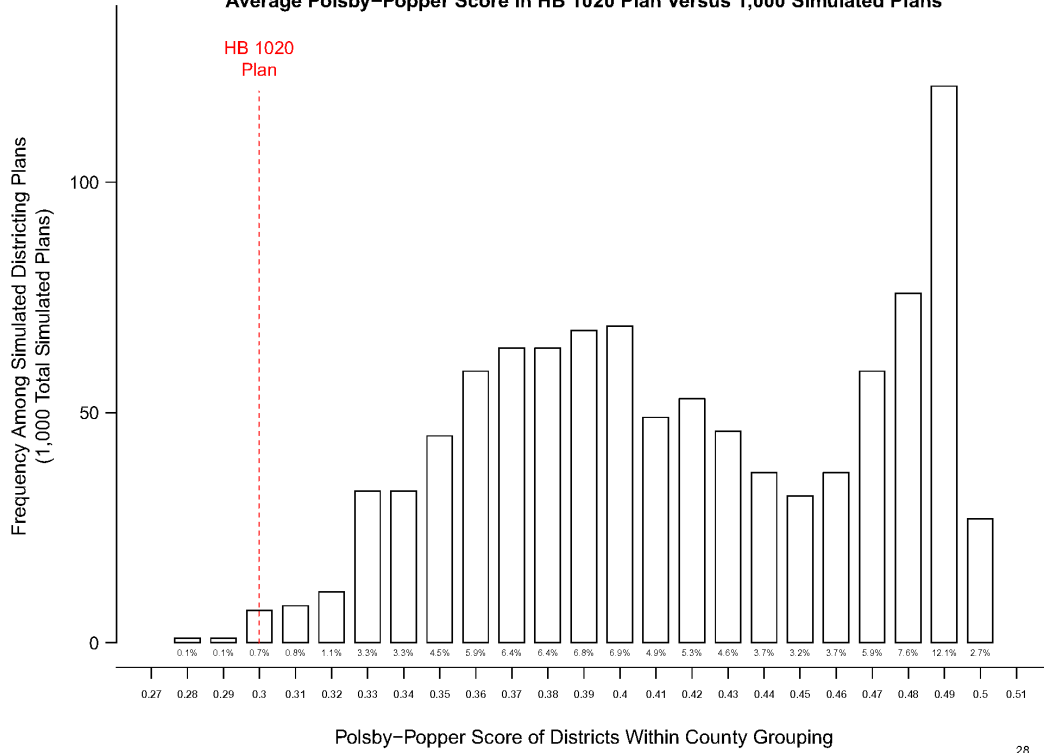


HB 1020 Plan (As Filed With Court on Sept. 19, 2019) (4 Districts)

The incumbents in the Cleveland-Gaston grouping significantly subordinated compactness in pursuing these partisan ends. The revisions to the base map lowered the average Reock score of the grouping from 0.411 to 0.395 and the average Polsby-Popper score from 0.283 to 0.256. Chen 9/27 Report at 36 (Table 5b). The Proposed House Plan is now less compact than the invalidated version of this grouping from the 2017 House Plan, and it is an extreme outlier in comparison to Dr. Chen’s Simulation Set 3. As shown below and in Dr. Chen’s report, the Proposed House Plan has a lower average Reock score for this grouping than 99.6% of the plans in Simulation Set 3 and a lower Polsby-Popper than 98.5% of the plans in Set 3. *Id.* at 39-41 (Figures 18-20).⁸

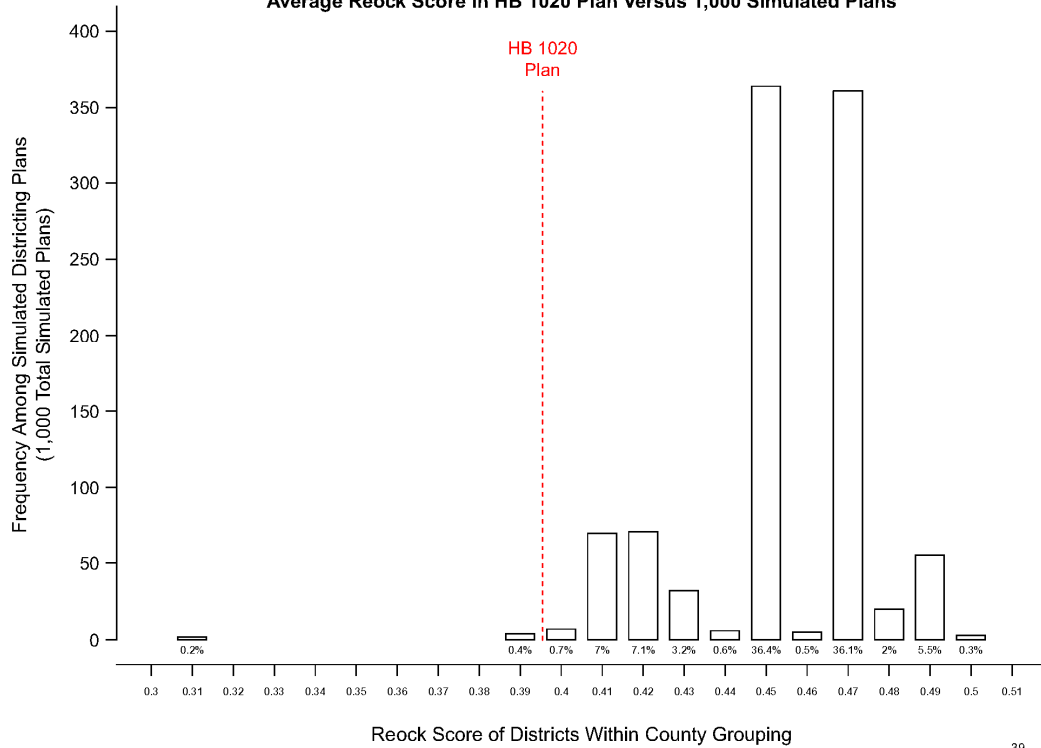
⁸ Most of Dr. Chen’s Set 3 plans for this grouping split zero VTDs, whereas the Proposed House Plan splits one. Chen 9/27 Report at 43. Most of the Set 3 plans split one more municipality than the Proposed House Plan, but 11.5% of the Set 3 plans split the same number of municipalities or fewer. *Id.* at 42. This does not reflect when municipalities are split multiple times, such as the Proposed House Plan’s splitting of Gastonia across three districts.

Figure 13: Forsyth–Yadkin County Grouping:
House Simulation Set 3 (Following Non-Partisan Redistricting Criteria and Avoiding Pairing of 2019 Incumbents):
Average Polsby–Popper Score in HB 1020 Plan Versus 1,000 Simulated Plans



28

Figure 18: Cleveland–Gaston County Grouping:
House Simulation Set 3 (Following Non-Partisan Redistricting Criteria and Avoiding Pairing of 2019 Incumbents):
Average Reock Score in HB 1020 Plan Versus 1,000 Simulated Plans



39

Dr. Chen’s Set 3 thus demonstrates that the Proposed House Plan for this grouping is a pro-Republican gerrymander that cannot be explained by an effort to avoid pairing incumbents. The Proposed House Plan is an extreme partisan gerrymander that unnecessarily splits Gastonia across three districts and subordinates compactness, in violation of the Court’s order.

D. Brunswick-New Hanover

Unlike the prior groupings, the House acted with impermissible partisan intent in *not* unpairing incumbents in the Brunswick-New Hanover grouping. The base map for this grouping paired two Republicans incumbents in House District 20, Representative Holly Grange and Representative Ted Davis. Representative Lewis asked Representatives Grange and Davis whether they wanted to revise the districts to unpair themselves, like the incumbents in the other groupings were doing. 9/12/19 House Comm. Tr. at 37:2-5. Representative Grange answered that, although she has preliminarily indicated that she intends to “run[] for another office,” she had not “filed for any election yet” and wanted to be unpaired from Representative Davis. *Id.* at 37:1-17. Representative Grange stated that it would be an inappropriate “political consideration” to not unpair the current incumbents based on whether she may run for another office. *Id.*

Representative Lewis then agreed that it would be proper for these two incumbents to revise their districts. Representative Lewis stated that the House Committee should attempt to “un-pair these incumbents, *which has been our intent from -- from the start here.*” 9/12/19 House Comm. Tr. at 37:22-23. Representative Lewis thus invited the incumbents in the grouping to the mapmaking terminal to carry out the unpairing process.

The subject of whether to unpair Representatives Davis and Grange again arose while the incumbents were huddled around the mapmaking terminal. Representative Grange reiterated that she believed it was proper, and indeed necessary, to avoid pairing incumbents in this grouping even though she may ultimately run for another office. Representative Grange stated that “I

don't think that what I'm going to do [in terms of running for Governor] should matter at this point because the maps are supposed to be based on incumbency." 9/12/19 House Comm. Hr'g Video at 5:34:20-33. Representative Grange added: "incumbency is supposed to be reflected [inaudible] nobody is officially running for office." *Id.* at 5:28:30-50.

A review of the base map reveals that there were a number of possible ways to unpair Representatives Grange and Davis, and legislative staff explained several of these options to the incumbents huddled around the mapmaking terminal. 9/12/19 House Comm. Hr'g Video at 5:26:30-5:31:30. Representative Davis, however, was dissatisfied with these potential changes. *See id.* He lamented that he would "lose" particular communities if certain changes were made to unpair him and Representative Davis. *Id.* at 5:30:08-15. He stated that he had "been representing for eight years" certain areas that he "no longer [would] be representing" under an option that staff proposed. *Id.* at 5:34:00-12.

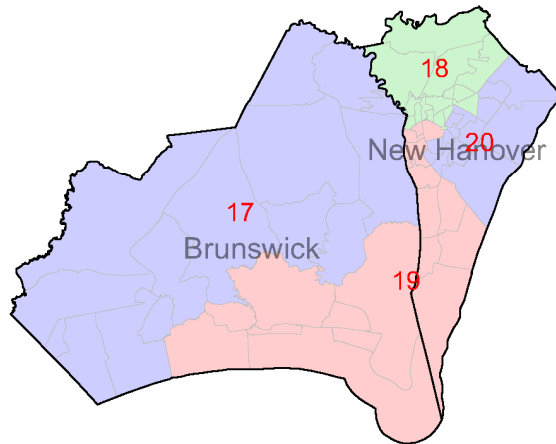
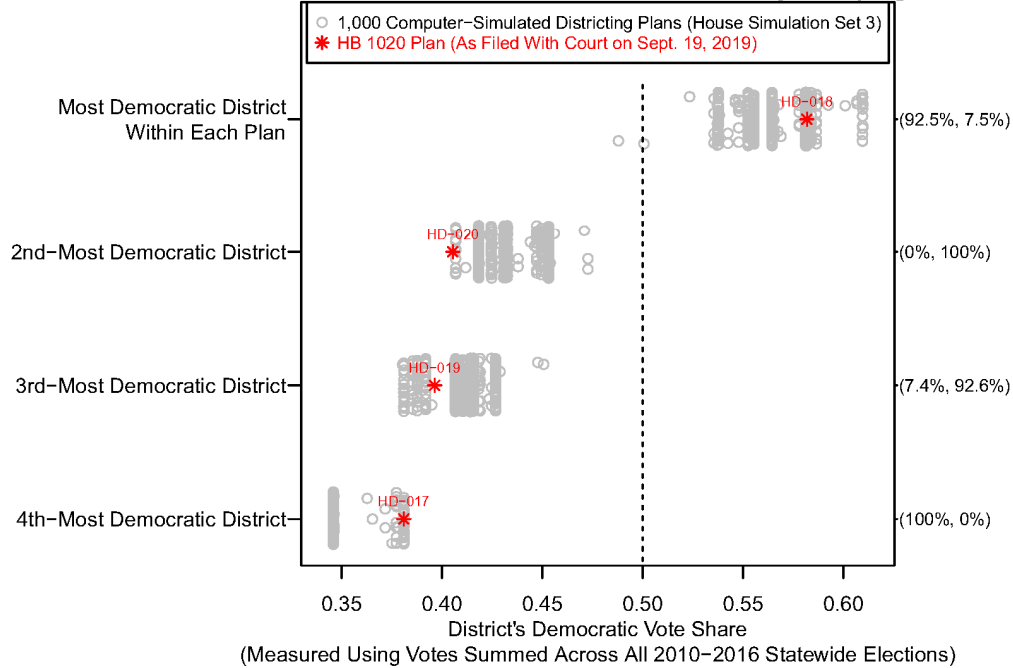
After a lengthy discussions at the computer terminal, but during which the incumbents did not actually move any VTDs on the screen to try to unpair the two incumbents, the incumbents took a break. Over the next hour, Representative Grange and Representative Davis each entered and re-entered the hearing room several times, and Representative Davis at one point could be seen talking on his cell phone. 9/12/19 House Comm. Hr'g Video at 6:09-6:17. After nearly an hour passed, Representative Davis returned to the room and whispered something to Representative Lewis. *Id.* at 6:38:55-6:39:18. Several minutes later, Representative Lewis announced that "[t]he Chair has been informed that there are no incumbency changes to make to this map, therefore, no changes to the Chen Map would be in order." 9/12/19 House Comm. Tr. at 46:10-12. Representative Lewis provided no explanation why the incumbents no longer were seeking to be unpaired. Nor did he explain why he was permitting the incumbents to remain

paired, unlike in all other groupings, despite stating earlier that his “intent . . . from the start” was to unpair the incumbents in this and all other groupings. *Id.* at 37:22-23.

Representative Grange did later provide a purported explanation for her change in positions. During a House floor debate on September 13, Representative Grange admitted that the incumbents could have found a “viable solution” to unpairing themselves. 9/13/19 House Floor Sess. at 555:8-556:9. But Representative Grange stated that she “withdrew [her] objection to the [base] map that I was double bunked with Representative Davis for the reason that in the *Covington* case, there was precedent set that an incumbent member that was not running for reelection, that map was thrown out.” *Id.* at 560:19-25. It seems apparent that Legislative Defendants’ counsel, who were also counsel in *Covington*, directly or indirectly supplied this justification to Representative Grange—in a discussion that was not public. Of course, Legislative Defendants’ counsel and their experts had partisanship data on the base map.

The most plausible inference from this sequence of events is that Legislative Defendants or their counsel directed the incumbents in this grouping to not unpair themselves because doing so would be politically disadvantageous to Republicans. Dr. Chen’s Simulation Set 3 confirms as much. Dr. Chen finds that all four districts in this grouping are over 92% partisan outliers compared to their corresponding districts in Set 3, and two of the districts are 100% outliers. Chen 9/27 Report at 47-48. As shown below and in Dr. Chen’s report, House District 20—the district that pairs Representatives Grange and Davis—is one of these districts that is an 100% outlier, as it is less Democratic than its corresponding district in all of the 1,000 simulations that avoid pairing the current incumbents.

**Figure 23: House Simulation Set 3:
Democratic Vote Share of the HB 1020 and Computer-Simulated Districts
Within the Brunswick–New Hanover County Grouping**



HB 1020 Plan (As Filed With Court on Sept. 19, 2019) (4 Districts)

47

The House’s adoption of the base map that pairs incumbents violates this Court’s order in at least three respects. First, the decision seems to have been made based on discussions involving Legislative Defendants’ counsel behind closed doors. This Court directed that “Legislative Defendants and their agents shall conduct the entire remedial process in full public view,” Decree ¶ 9, and the conversations where Legislative Defendants’ counsel apparently directed the incumbents to not amend the base map did not occur “in full public view.” This

apparent violation of the Court’s transparency requirements is highly material because Legislative Defendants’ counsel and their consultants had partisanship data on the base map and all of the individual VTDs. Legislative Defendants’ counsel surely knew that amending the base map to unpair the two incumbents would produce a less Republican district.

Second, and relatedly, the House violated this Court’s prohibition that “partisan considerations . . . shall not be used in the drawing of legislative districts in the Remedial Maps.” Judgment COL ¶ 169. While avoiding pairing incumbents was an optional criterion, once the House decided to apply that criterion, it had to do so evenhandedly across-the-board and not only when it served one political party’s partisan interests. As detailed throughout this brief, the House repeatedly unpaired incumbents to the detriment of the Democratic Party. The House’s decision not to unpair the incumbents in this grouping—and only in this one grouping—was based on impermissible “partisan considerations.”

Third, Representative Davis improperly acted “to preserve the core[]” of his prior district under the invalidated 2017 House Plan. Representative Davis rejected an option for unpairing him from Representative Grange because it would cause him to lose certain areas he had “been representing for eight years.” 9/12/19 House Comm. Hr’g Video at 5:34:00-12. This House grouping is one that was drawn in 2011 and unchanged in 2017, and thus Representative Davis’ reference to areas that he had “been representing for eight years” was a direct reference to the composition of the 2017 House Plan version of this grouping. Representative Davis affirmatively acted to preserve the core of his prior district, contrary to the Court’s order.

The pretextual explanation offered for the decision to not unpair the incumbents in this grouping—because of a purported “precedent” set in the *Covington* case—further illustrates that improper considerations were at play. 9/13/19 House Floor Sess. at 560:18-24. Contrary to

Representative Grange’s assertion, it is not true that the proposed map in *Covington* “was thrown out because it was drawn to take incumbency into account when [Representative Larry Bell] had already announced that he was not running for reelection.” *Id.* at 560:25-561:2. The *Covington* court rejected the General Assembly’s proposed House District 21 because it retained “the very problems that rendered the prior version of the district unconstitutional.” *Covington v. North Carolina*, 283 F. Supp. 3d 410, 440 (M.D.N.C. 2018). “[I]n order to draw Representative Bell’s residence into House District 21, the General Assembly retained much of the bizarre shape of the Sampson County portion of the district and divided a precinct and municipality along racial lines.” *Id.* Here, in contrast, unpairing Representatives Grange and Davis would not require retaining the problematic aspects of the 2017 House Plan.⁹ Moreover, Representative Bell in *Covington* swore under oath that he did “not intend to run for re-election to the General Assembly.” *Covington*, ECF No. 211-1. Representative Grange has made no such assertion; to the contrary, she repeatedly stated during the hearings that she is not “officially running for” another office yet. 9/12/19 House Comm. Hr’g Video at 5:28:30-50; *see also* 9/12/19 House Comm. Tr. at 37:1-17 (“frankly, nobody has filed for any election yet”).

Because improper political considerations and non-public deliberations drove the House’s decision to treat this grouping unlike every other grouping, the Court must reject the Proposed House Plan for this grouping.

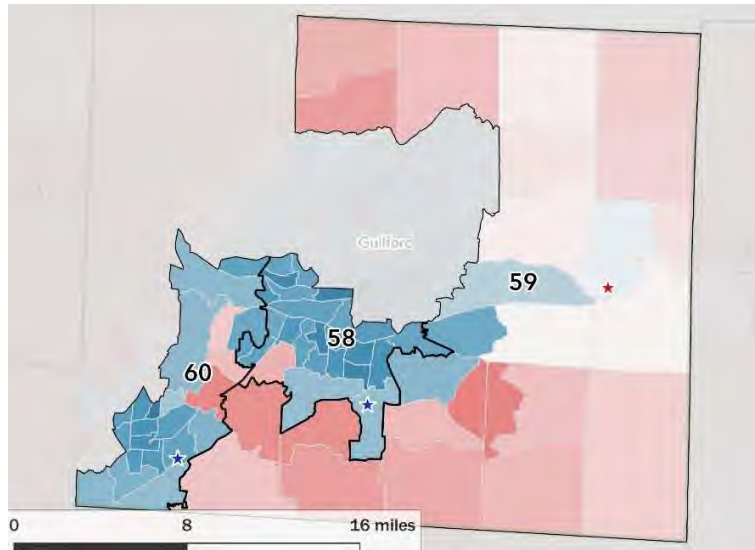
⁹ Dr. Chen’s Simulation Set 3 demonstrates that unpairing the incumbents would not subordinate traditional criteria other. All of Dr. Chen’s simulations of this grouping in Set 3 split the same number of municipalities as the proposed House Plan, and nearly a quarter of the simulations also do not split any VTDs. Chen 9/27 Report at 50-51 (Figures 27-28). While the simulations have slightly lower Reock scores than the Proposed House Plan, over 80% of the simulations have better Polsby-Popper scores. *Id.* at 47-49 (Figures 24-26).

E. Guilford

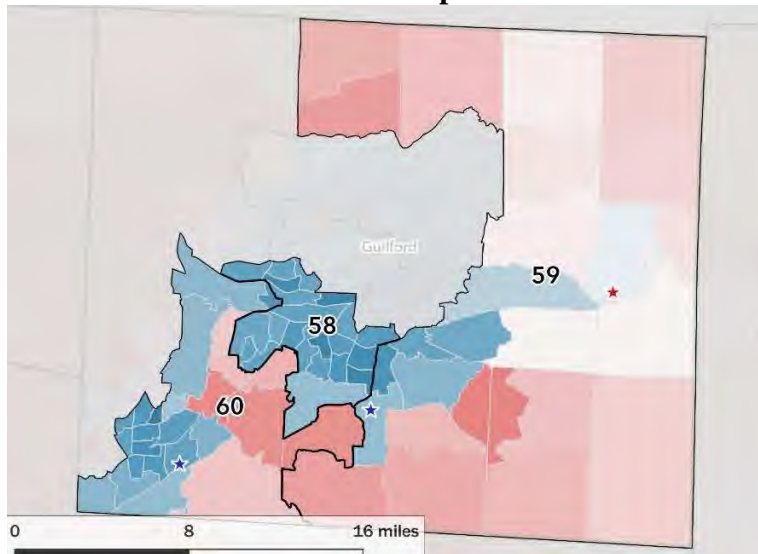
This Court found that the 2017 House Plan version of the Guilford grouping impermissibly “packed Democratic voters into House Districts 58 and 60 to make House District 59 favorable to Republicans.” Judgment FOF ¶ 384. This Court found especially problematic that “House District 58 ha[d] ‘boot-like appendages’ to grab Democratic VTDs and ensure these voters could not make House District 59 competitive or Democratic-leaning.” *Id.* (quoting Dr. Cooper’s testimony).

The Proposed House Plan recreates this feature of House District 58—and in fact reverts House District 58 almost entirely to its prior boundaries. As shown below, the base map for this grouping paired two representatives in House District 60, and to unpair these incumbents the House added the “boot-like,” heavily Democratic VTD in southern Guilford County back to House District 58. The result is that House District 58 is a near-replica of the 2017 version of the district. Dr. Chen finds that the *86% of the population* in the proposed House District 58 overlaps with the invalidated 2017 version of the district. Chen 9/27 Report at 61-62.

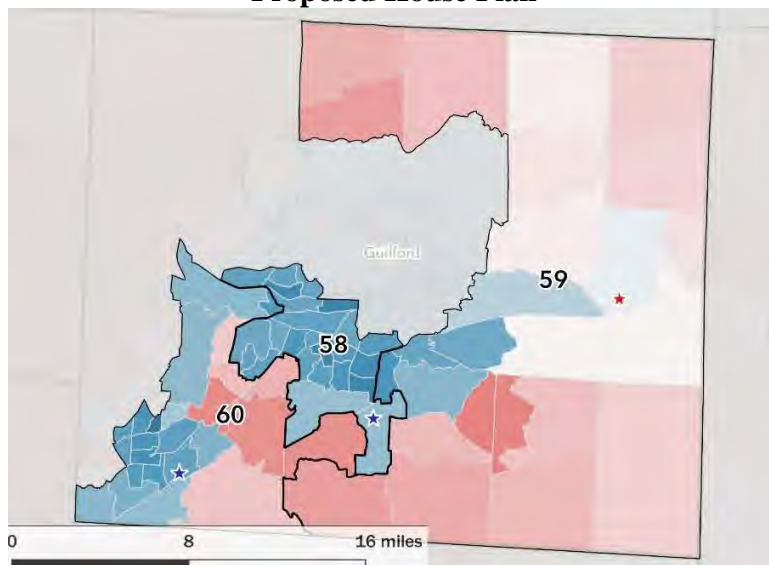
– 744 –
2017 House Plan



Base Map



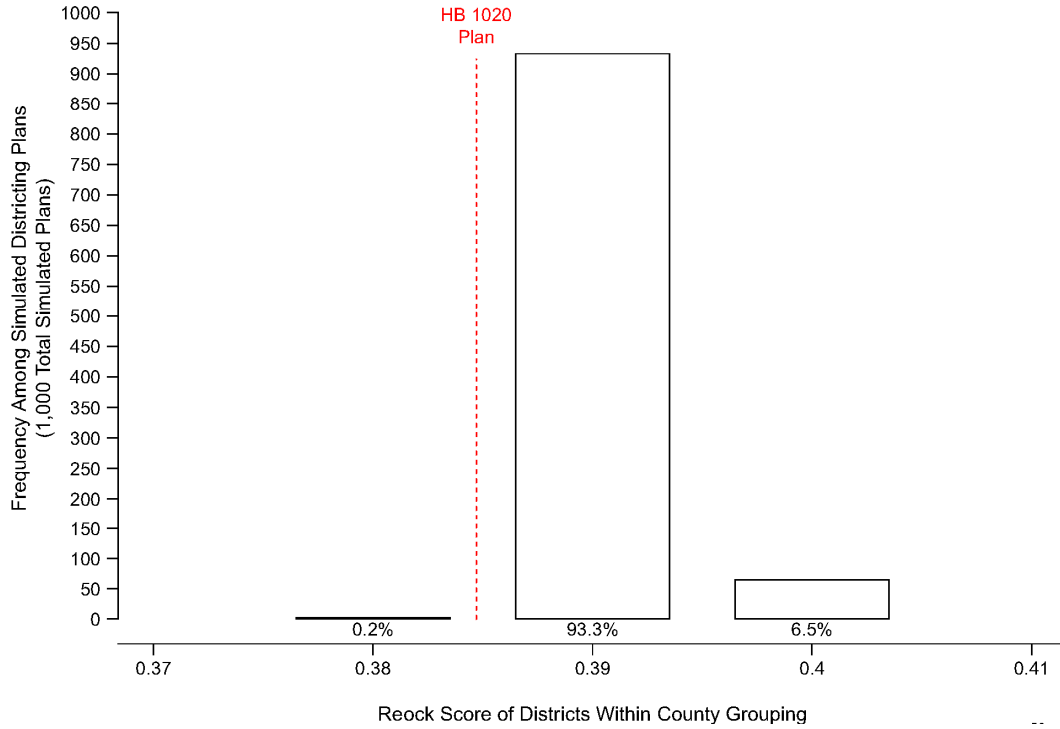
Proposed House Plan



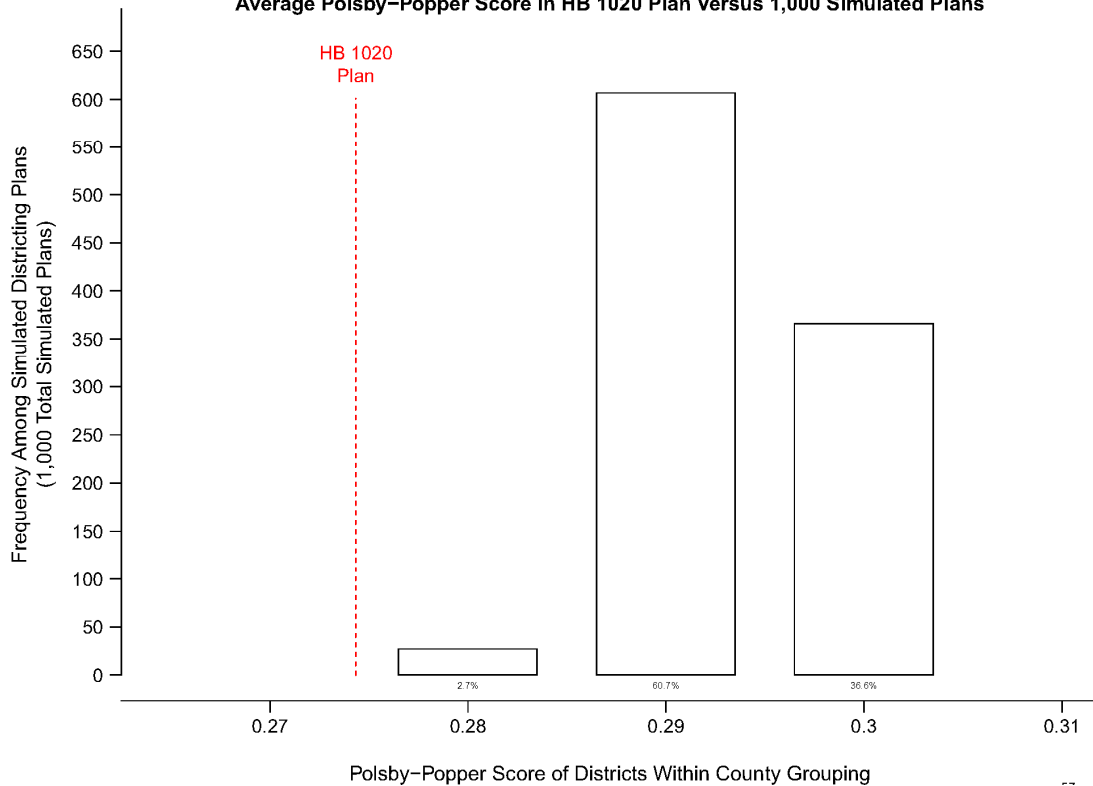
While Dr. Chen does not find that the Proposed House Plan for this grouping is an extreme outlier in partisanship relative to his Simulation Set 3, the extraordinarily high overlap between the proposed and old versions of House District 58 violates this Court’s prohibition on “preserv[ing] the cores of invalidated 2017 district.” Decree ¶ 9. And the consequence of changing House District 58 to recreate its old boundaries was to make House District 59 more favorable to Republicans. Chen 9/27 Report at 54 (Table 7a).

Moreover, Dr. Chen does find that the Proposed House Plan is an extreme outlier in its lack of compactness. The revisions to the base map for this grouping significantly subordinated compactness. The revisions lowered the Reock and Polsby-Popper scores of both House District 58 and House District 59, and for House District 58 in particular. The Reock score of House District 58 fell from 0.445 to 0.334, and the Polsby-Popper score of the district fell from 0.241 to 0.174. Chen 9/27 Report at 55 (Table 7b). The average compactness scores for the grouping correspondingly dropped as well: the average Reock score for the grouping dropped from 0.440 to 0.401, and the average Polsby-Popper score dropped from 0.264 to 0.232. *Id.* And, as shown below and in his expert report, Dr. Chen finds that the Proposed House Plan for Guilford County is less compact than 100% of his Set 3 simulations using Polsby-Popper and 99.8% of the Set 3 simulations using Reock. *Id.* at 56-58 (Figures 29-31).

**Figure 29: Guilford County Grouping:
House Simulation Set 3 (Following Non-Partisan Redistricting Criteria and Avoiding Pairing of 2019 Incumbents):
Average Reock Score in HB 1020 Plan Versus 1,000 Simulated Plans**



**Figure 30: Guilford County Grouping:
House Simulation Set 3 (Following Non-Partisan Redistricting Criteria and Avoiding Pairing of 2019 Incumbents):
Average Polsby-Popper Score in HB 1020 Plan Versus 1,000 Simulated Plans**



In short, in the name of unpairing incumbents, the House substantially recreated one of the invalidated 2017 districts in this grouping and rendered this grouping less compact than nearly 100% of the nonpartisan possibilities in Dr. Chen’s Simulation Set 3.

III. The Referee Should Redraw the Five House Groupings

The Court should direct the Referee to draw from a blank slate all five of the House groupings described above, following the criteria set forth in the Court’s Decree. The Court retained the Referee “to develop remedial maps for the Court should the General Assembly fail to enact lawful Remedial Maps within the time allowed.” Decree ¶ 13. The General Assembly failed to enact lawful remedial districts in these five groupings, and accordingly the Referee should now “develop remedial plans” for these groupings as specified in the Court’s Decree.

The Court should reject Legislative Defendants’ request that the Court adopt the base map for those groupings where the Court finds issue with the revisions that were made. That suggestion should be rejected for at least three reasons. First, it would result in different criteria being applied in different groupings. There would be some groupings (that the Court does not change from the Proposed House Plan) in which an incumbency protection criterion was applied to intentionally unpair incumbents from the base map, but other groupings (where the Court would revert to the base map) where no incumbency protection criterion is applied and incumbents remain paired. The same criteria should apply in all groupings. Allowing otherwise would in fact violate a motion passed by the House Committee “to treat all of the incumbents the same” by unpairing incumbents in every House grouping. 9/12/19 House Comm. Tr. at 12:8-9. Second, the base maps themselves are infected by the House’s myriad procedural violations of the Court’s Decree, including the apparent reliance on political consultants and partisan data in deciding to switch from Set 2 to Set 1. And third, adopting the base map would not remedy the

violation in Brunswick-New Hanover, since the problem there is that the House adopted the base map for impermissible partisan and core retention reasons.

Legislative Defendants’ assertion that “[t]he Court has no guiding principle by which to guide its own line drawing” is false. Leg. Defs. Br at 24. The Court set forth specific criteria to govern the drawing of remedial districts, and those criteria are the ones that the General Assembly itself adopted in 2017. Decree ¶ 5. The Referee’s “guiding principle” in redrawing these five groupings will be these General Assembly-endorsed criteria. Legislative Defendants’ assertion that having the Referee redraw districts “will necessarily raise questions,” Leg. Defs. Br. at 24, is not grounded in law but rather is a thinly-veiled threat that this Court should not countenance.

While Plaintiffs believe that the appropriate course of action is for the Referee to simply redraw these groupings, if it would assist the Court or the Court otherwise deems it appropriate, Plaintiffs would be happy to provide the Court with any relevant data and files from Dr. Chen’s Simulation Set 3 for these five House groupings.

CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court reject the General Assembly’s Proposed House Plan in the Columbus-Pender-Robeson, Forsyth-Yadkin, Cleveland-Gaston, Brunswick-New Hanover, and Guilford groupings, and direct the Referee to draw new remedial districts in these groupings.

Respectfully submitted this the 27th day of September, 2019

POYNER SPRUILL LLP

By: /s/ Edwin M. Speas, Jr.
Edwin M. Speas, Jr.
N.C. State Bar No. 4112
Caroline P. Mackie
N.C. State Bar No. 41512
P.O. Box 1801
Raleigh, NC 27602-1801
(919) 783-6400
espeas@poynerspruill.com

*Counsel for Common Cause, the North
Carolina Democratic Party, and the
Individual Plaintiffs*

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

R. Stanton Jones*
David P. Gersch*
Elisabeth S. Theodore*
Daniel F. Jacobson*
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
stanton.jones@arnoldporter.com

PERKINS COIE LLP

Marc E. Elias*
Aria C. Branch*
700 13th Street NW
Washington, DC 20005-3960
(202) 654-6200
melias@perkinscoie.com

Abha Khanna*
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
(206) 359-8000
akhanna@perkinscoie.com

*Counsel for Common Cause and the
Individual Plaintiffs*

**Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing by email, addressed to the following persons at the following addresses which are the last addresses known to me:

Amar Majmundar
Stephanie A. Brennan
Paul M. Cox
NC Department of Justice
P.O. Box 629
114 W. Edenton St.
Raleigh, NC 27602
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
pcox@ncdoj.gov

*Counsel for the State Board of Elections and
its members*

John E. Branch III
Nathaniel J. Pencook
Andrew Brown
Shanahan Law Group, PLLC
128 E. Hargett Street, Suite 300
Raleigh, NC 27601
jbranch@shanahanlawgroup.com
npencook@shanahanlawgroup.com
abrown@shanahanlawgroup.com
Counsel for the Intervenor Defendants

Thomas A. Farr
Phillip J. Strach
Michael McKnight
Alyssa Riggins
Ogletree, Deakins, Nash, Smoak & Stewart,
P.C.
4208 Six Forks Road, Suite 1100
Raleigh, NC 27609
Thomas.farr@ogletree.com
Phillip.strach@ogletree.com
Michael.mcknight@ogletree.com
Alyssa.riggins@ogletree.com
Counsel for the Legislative Defendants

E. Mark Braden
Richard B. Raile
Trevor M. Stanley
Baker & Hostetler, LLP
Washington Square, Suite 1100
1050 Connecticut Ave., N.W.
Washington, DC 20036-5403
rraile@bakerlaw.com
mbraden@bakerlaw.com
tstanley@bakerlaw.com
Counsel for the Legislative Defendants

This the 27th day of September, 2019.

/s/ Edwin M. Speas, Jr.
Edwin M. Speas, Jr.

Exhibit 4

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

COMMON CAUSE, *et al.*
Plaintiffs,

V.

ORDER

Representative DAVID R. LEWIS,
in his official capacity as Senior
Chairman of the House Select
Committee on Redistricting, *et al.*,
Defendants.

This matter comes before the undersigned three-judge panel for review of Remedial Redistricting Maps (hereinafter “Remedial Maps”) enacted by the North Carolina General Assembly on September 17, 2019, N.C. Sess. Laws. 2019-219 (Senate Bill 692) and 2019-220 (House Bill 1020), to apportion the legislative districts within North Carolina. The Remedial Maps were enacted following entry of the September 3, 2019, Judgment of this Court wherein the Court held that certain districts in the 2017 House and Senate plans (hereinafter “2017 Enacted Maps”) were unconstitutional partisan gerrymanders. The Court ordered that twenty-one Senate districts contained within seven county groupings and fifty-six House districts contained within fourteen county groupings be redrawn in conformance with the mandate of its Judgment.

Following the enactment of the Remedial Maps, Plaintiffs submitted objections to the new maps. Plaintiffs raised no specific objections to the twenty-one new districts drawn in the Remedial Senate Maps. Plaintiffs raised no specific objection to thirty-seven House Districts contained within nine county groupings in the Remedial House Map, but did raise specific objections to nineteen House Districts contained within five county groupings. *See,*

generally, Plaintiffs’ Objections to the Remedial Plans (Sept. 27, 2019). The county groupings and House Districts that are the subject of the Plaintiffs’ objections are:

- a. Columbus-Pender-Robeson (HD-16, -46, & -47);
- b. Forsyth-Yadkin (HD-71, -72, -73, -74, & -75);
- c. Gaston-Cleveland (HD-108, -109, -110, & -111);
- d. Brunswick-New Hanover (HD-17, -18, -19, & -20); and
- e. Guilford (HD-58, -59, & -60).

All parties have had a full opportunity to submit memoranda supporting or opposing the Remedial Maps. The Court has examined each of the seventy-seven newly-drawn Senate and House districts in the Remedial Maps, and in particular the nineteen districts objected to by Plaintiffs, as well as the transcripts, video and written record of the General Assembly proceedings, and the arguments of counsel. The findings and conclusions of the Court are set out below.

In this Court’s September 3, 2019, Judgment, the Court required that remedial maps conform to specific criteria. Certain of the Court’s criteria governed the *process* required of the General Assembly if it chose to enact remedial maps, while other criteria set out *substantive requirements* for any remedial maps enacted.

I. Compliance with the Procedural Requirements of the September 3, 2019, Judgment of the Court.

With respect to the process that the Court required of the General Assembly, the following criteria were set out in the Court’s Judgment:

- a. Legislative Defendants and their agents shall conduct the entire remedial process in full public view. At a minimum, this requires all map drawing to occur at public hearings, with any relevant computer screen visible to legislators and public observers. Legislative Defendants and their agents shall not undertake any steps to draw or revise the new districts outside of public view.

- b. In redrawing the relevant districts in the Remedial Maps, the invalidated 2017 districts may not be used as a starting point for drawing new districts, and no effort may be made to preserve the cores of invalidated 2017 districts.
- c. Election Data. Partisan considerations and election results data shall not be used in the drawing of legislative districts in the Remedial Maps.
- d. To the extent that Legislative Defendants wish to retain one or more individuals who are not current legislative employees to assist in the map-drawing process, Legislative Defendants must seek and obtain prior approval from the Court to engage any such individuals.

In reviewing the actions of the General Assembly that led to the enactment of the Remedial Maps, the Court is satisfied that the process chosen and implemented by both the House and Senate of the General Assembly comported with the procedural requirements of the Court's Judgment. Several aspects of the General Assembly's process, and several of the Plaintiffs' objections thereto, merit further discussion.

a. Requirement that the remedial redistricting process be conducted in full public view.

In contrast to the unconstitutional 2017 Enacted Maps, the remedial redistricting process was conducted in full public view, as ordered by the Court. To comply with the Court's mandate, both the Senate and the House conducted the vast majority of the remedial redistricting process in public hearings, broadcast by audio and video livestream, so that Plaintiffs and interested public could view the process in its entirety. A record of the entire proceedings has been made and preserved and is available not only to the Court, but to the public for inspection and scrutiny.

Plaintiffs, in their *Objections to the Remedial Plans*, make note of some apparent lapses in transparency that predictably and justifiably give rise to suspicion. These lapses are detailed in *Plaintiffs' Objections to the Remedial Plans* on pages 2-7. For example, Plaintiffs suspect that Rep. David Lewis, chair of the House Redistricting Committee,

conferred with Republican redistricting strategists to determine which dataset of simulated maps created by Plaintiffs' expert Dr. Jowei Chen, Set 1 or Set 2, ought to be used as the base map in the remedial process. Rep. Lewis denies taking such action, but if Rep. Lewis had consulted in private regarding the partisan consequences of choosing either Set 1 or Set 2, the Court does not accept Legislative Defendants' rationalization that such a consultation would not be "map drawing" but "map *picking*" and therefore not in violation of the Court's mandate that the "entire remedial process" be conducted in "full public view." *Leg. Defs' Memorandum Regarding House and Senate Remedial Maps (hereinafter "Leg. Defs' Memorandum")*, p. 12 (Sept. 23, 2019) (*emphasis original*). On the other hand, the Court notes that the House Redistricting Committee's ultimate choice to use Set 1 as the starting point for the remedial process was made with unanimous and bipartisan approval by the House Redistricting Committee after thorough debate in public. *Tr. H. Redistricting Comm.*, Sept. 11, 2019 at 17:3-22.

The Court is satisfied, despite the lapses identified by Plaintiffs, that the efforts made by the General Assembly to ensure that the remedial process was conducted in public view were reasonable and complied with the Court's mandate. It is noteworthy to the Court that both Legislative Defendants and ranking Democratic members of the General Assembly concur that "the level of public access provided to the committee process was unprecedented in the history of the General Assembly, regardless of the type of committee or subject matter involve." *Leg. Defs' Memorandum* at 10. Democratic Minority Leader Senator Dan Blue, during Senate floor debate on the Senate's remedial plan, stated that "[f]or this process, the rules that have been applied have been evenly administered. It is a transparent, open, process, more transparent than anything I've seen in this legislature, especially with redistricting" and "[o]ne of the mainstays of a democratic government is transparency and that's why I think this process worked so well." *Senate Floor Debate*

Transcript, Sept. 16, 2019, at 20:7-12; 22:15-17. As such, the Court overrules the objections of Plaintiffs to the extent the objections challenge the General Assembly's compliance with the mandate of the Court that the remedial process be conducted in full public view.

b. Requirement that invalidated 2017 districts not be used as a starting point for drawing new districts and there be no effort to preserve the cores of invalidated districts.

The Court finds and concludes that the General Assembly's use of Set 2 (Senate) and Set 1 (House) of the simulated maps created by Dr. Chen as the datasets from which to select the base Remedial Senate and House Maps comports with the mandate of the Court that invalidated 2017 districts not be used as a starting point for drawing new districts. The Court has previously found, in its September 3, 2019, Judgment, that these simulated maps – both Set 1 and Set 2 – were created by an algorithm designed by Dr. Chen to maximize traditional redistricting criteria and to disregard partisan criteria and the cores of the 2017 districts. *See Judgment*, ¶¶ 83-86, 113-114. The Court accorded Dr. Chen's testimony and methodology great weight in the liability phase of this litigation and again does so here.

The Court further concludes that the methodology adopted by the General Assembly to select the ultimate House and Senate base remedial maps, through a random process from among the various simulated maps contained in Dr. Chen's datasets, was reasonable. The methodology utilized by the General Assembly rank-ordered the simulated maps for each county grouping by optimizing traditional, nonpartisan redistricting criteria computed by Dr. Chen, and then selected a map, through a random drawing, from the top five rank-ordered maps to serve as the base district maps for that grouping. The process was overseen by nonpartisan staff and conducted in public view. Notably, the base map selection process received broad bipartisan support in both the House and Senate Redistricting Committees. The Court recognizes that other methodologies might have been

chosen that could have resulted in maps that more reliably optimized traditional and nonpartisan redistricting criteria. For example, the decision to randomly draw a base map from county groupings where Dr. Chen’s simulation showed that only a few unique maps could possibly be drawn within the group raises the possibility that the “optimal” map was supplanted by a map significantly less optimal through the random drawing process.¹ Nonetheless, despite these possible shortcomings in the chosen methodology, the decision to consistently employ and abide by random choice to choose among simulated maps created through a nonpartisan algorithm was reasonable. As such, the Court overrules the objections of Plaintiffs to the extent the objections challenge the General Assembly’s compliance with the mandate of the Court that invalidated 2017 districts not be used as a starting point for drawing new districts and there be no effort to preserve the cores of invalidated districts.

c. Requirement that no partisan consideration or election results data be used in the drawing of legislative districts in the Remedial Maps.

The Court is satisfied that significant and reasonable efforts were taken by the General Assembly to attempt to limit partisan consideration and election results data from being used in the remedial redistricting process. The Court finds and concludes that to the degree that this mandate could be achieved, it was significantly aided by public and media scrutiny and the transparency of the remedial process.

¹ For example, in the simulations produced by Dr. Chen for the Franklin-Nash House county grouping, due to the relatively small number of VTDs and municipalities in that grouping, only five unique maps could possibly be drawn while comporting with traditional and legal redistricting criteria. *See, Testimony of Dr. Chen, Trial Tr. 357:10-358:15*. As such, the random choice of one of those five possible simulated maps for this House grouping might (with a 1:5 chance) have resulted in choosing the fifth-most optimal choice – i.e. the “worst” choice – rather than the more optimal first choice.

Plaintiffs, in their *Objections to the Remedial Plans*, raise a serious concern regarding the use of election data or partisan data. Specifically, Plaintiffs have provided evidence to the Court that shortly after the House and Senate Redistricting Committees announced that Dr. Chen's simulated maps would be used to select the base map, counsel for the Legislative Defendants, responding to a request from legislative staff for shapefiles and block assignments for those maps, sent an email containing a link to Dr. Chen's backup files to dozens of recipients, including all members of the House and Senate Redistricting Committees. Dr. Chen's backup files contained extensive partisanship data on every district in every one of Dr. Chen's simulated maps. With these files, any recipient could look up the partisan composition of any district in any of Dr. Chen's simulated maps. The link was emailed by Legislative Defendants' counsel at 4:21 p.m. on September 9, 2019; Plaintiffs counsel objected to the distribution of the data shortly thereafter at 4:45 p.m., and the link was disabled at or about 7:09 p.m.

Legislative Defendants, in their *Reply Brief*, report that no central staff member completed the download of the partisan dataset, and that of the members of the House Redistricting Committee,² only two, one Republican member and one Democratic member, had, through their staff, downloaded the data at issue. Legislative Defendants further report that as to the data downloaded by the Republican member's staff, the zip file containing the partisan data was never accessed; with respect to the Democratic member's data, counsel argues there is no evidence that the Democratic member or her office used the data or sought to inject partisan changes into the maps. Legislative Defendants' counsel

² Legislative Defendants only report the potential use of data by members of the House and House staff members because "Plaintiffs only attack the House" and are not raising objections to the Senate Remedial Maps. *Reply Brief at 14*.

also note the complexity of the partisan data, asserting that it is “entirely unusable for a non-expert in political data analysis.” *Reply Brief at 14*.

The Court finds and concludes that the distribution of partisan data by email to legislative staff and members of the Redistricting Committees by counsel for Legislative Defendants is a serious breach of this Court’s mandate. However, the Court further finds that the distribution was inadvertent, and the potential damage was mitigated by public scrutiny and the vigilance of Plaintiffs’ counsel and their prompt objection. As such, the Court concludes that this breach alone is not sufficient to invalidate the remedial map drawing process. The Court overrules the objections of Plaintiffs to the extent the objections challenge the General Assembly’s compliance with the mandate of the Court that no partisan consideration or election results data be used in drawing the remedial maps.

d. Requirement that Legislative Defendants obtain prior approval of the Court to retain individuals who are not current legislative employees to assist in the map-drawing process.

Plaintiffs, in their *Objections to the Remedial Plans*, establish that Legislative Defendants, without seeking prior approval of the Court, utilized the services of Clark Bensen, who operates a political consulting firm known as “POLIDATA,” during the remedial map drawing process. Plaintiffs note that Mr. Bensen is an attorney by training, and according to his resume, has been involved in “redistricting and census issues throughout the previous three reapportionment cycles and has developed political and census datasets for every state in the nation” and that “development of election datasets for every level of geography has been a specialty since 1974.” *Id. at 5*. Mr. Bensen previously served as director of “Political Analysis” for the Republican National Committee where his duties were to “undertake the collection, compilation, systemization and analysis of

politically related data.” *Id.* In 2011, Legislative Defendants relied upon Mr. Bensen to provide political data for them in drawing the 2011 plans. *Id.*

Legislative Defendants, by way of affidavit of Mr. Bensen, confirm that Mr. Bensen was contacted by email on September 9, 2019, inquiring about his availability to “analyze 1,000 districting plans” in a short period of time. *Bensen Affidavit*, ¶ 7. He responded that he had limited availability, and he was then requested to “simply compare the two sets of 1,000 plans with two of the sets of 1,000 plans that Dr. Chen had provided during the liability stage, for the purposes of verifying that the plans submitted by Dr. Chen during the remedial stage appeared to be the same plans that had been submitted previously.” *Id.*, ¶¶ 7-8. Mr. Bensen further reports that he conducted this comparison on September 10, 2019, and by 2:30 p.m. that same day, he reported to counsel for Legislative Defendants that “it appeared to [him] ‘like almost all of the old plans are included.” *Id.*, ¶ 16. He states that “he had neither the time nor the instructions to undertake” any other review associated with the remedial maps and that comparison of datasets was the sole task he performed. *Id.*, ¶ 17. Mr. Bensen denies that he conducted any partisan analysis of any simulated districts in the data provided and did not provide any information to counsel or anyone else about partisan performance of the simulated districts. *Id.*, ¶ 18.

Plaintiffs also object to the utilization of Dr. Janet R. Thornton during the remedial map drawing process without prior authorization of the Court. Dr. Thornton testified as an expert on behalf of the Legislative Defendants during the liability phase of this litigation. Like Mr. Bensen, Dr. Thornton has provided an affidavit stating that her role, at all times prior to the enactment of the Remedial House and Senate Maps, was limited to the single task, on September 10, 2019, of verifying that the datasets provided to the General Assembly were in fact the same datasets that Dr. Chen had produced for the purposes of

the litigation. *Thornton Affidavit*, ¶¶ 3-6. She further states that between September 3, 2019, and September 29, 2019, she did not “review the partisan make-up or review political information for the county groupings for the remedial plan.” *Id.*, ¶ 7.

Legislative Defendants respond to Plaintiffs’ objection by stating, in summary, that the fact that outside personnel would be verifying that the data received by the General Assembly were identical to the data Dr. Chen had utilized during the liability phase of the litigation was discussed in public redistricting committee meetings (*see, e.g. Tr. S. Redistricting Comm., Sept. 10, 2019, at 50:10-15*). Moreover, Legislative Defendants argue, the authentication of data is not “assistance in the map-drawing process.” *Reply Brief at 10*. The Court agrees. There is no direct evidence contradicting the affidavits of Mr. Bensen and Dr. Thornton, and taking their sworn testimony as true, the Court concludes that their assistance in authenticating and verifying data does not violate the specific mandate of the Court. As such, the Court overrules the objections of Plaintiffs to the extent the objections challenge the General Assembly’s compliance with the mandate of the Court that Legislative Defendants obtain prior approval of the Court to retain outside individuals to assist with the remedial process.

II. Compliance with the Substantive Requirements of the September 3, 2019, Judgment of the Court.

The Court, in its Judgment of September 3, 2019, required that any remedial maps enacted by the General Assembly comport with a number of substantive criteria. The criteria are as follows:

- a. Equal Population. The mapmakers shall use the 2010 federal decennial census data as the sole basis of population for drawing legislative districts in the Remedial Maps. The number of persons in each legislative district shall comply with the +/- 5 percent population deviation standard established by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E. 2d 377 (2002).

- b. Contiguity. Legislative districts shall be comprised of contiguous territory. Contiguity by water is sufficient.
- c. County Groupings and Traversals. The mapmakers shall draw legislative districts in the Remedial Maps within county groupings as required by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E. 2d 377 (2002) (*Stephenson I*), *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (*Stephenson II*), *Dickson v. Rucho*, 367 N.C. 542, 766 S.E.2d 238 (2014) (*Dickson I*) and *Dickson v. Rucho*, 368 N.C. 481, 781 S.E.2d 460 (2015) (*Dickson II*). Within county groupings, county lines shall not be traversed except as authorized by *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*. The county groupings utilized in the 2017 House and Senate Maps shall be utilized in the Remedial Maps.
- d. Compactness. The mapmakers shall make reasonable efforts to draw legislative districts in the Remedial Maps that improve the compactness of the districts when compared to districts in place prior to the 2017 Enacted Legislative Maps. In doing so, the mapmaker may use as a guide the minimum Reock (“dispersion”) and Polsby-Popper (“perimeter”) scores identified by Richard H. Pildes and Richard G. Neimi in *Expressive Harms, “Bizarre Districts,” and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno*, 92 Mich. L. Rev. 483 (1993).
- e. Fewer Split Precincts. The mapmakers shall make reasonable efforts to draw legislative districts in the Remedial Maps that split fewer precincts when compared to districts in place prior to the 2017 Enacted Legislative Maps.
- f. Municipal Boundaries. The mapmakers may consider municipal boundaries when drawing legislative districts in the Remedial Maps.
- g. Voting Rights Act. Any Remedial Maps must comply with the VRA and other federal requirements concerning the racial composition of districts.
- h. Incumbency Protection. The mapmakers may take reasonable efforts to not pair incumbents unduly in the same election district.

With respect to each criteria (a) through (f), as to the maps as a whole, there is no evidence that the General Assembly did not comply, and Plaintiffs do not object to the Remedial Maps as a whole on these grounds. As such, the Court finds and concludes that the Remedial House and Senate Maps, as a whole, comport with the legal requirements of

equal population, contiguity, and the *Stephenson* county grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of compactness, fewer split precincts, and consideration of municipal boundaries when compared to the districts in place prior to the 2017 Enacted Maps.

a. Mandate that the Remedial Maps comply with the VRA and other federal requirements concerning the racial composition of districts.

The Court further finds and concludes that the Remedial Maps comply with criterion (g) above, namely that the Remedial Maps comply with the Voting Rights Act and other federal requirements concerning the racial composition of districts. In the Court’s Judgment of September 3, 2019, the Court stated that any parties “may submit briefing, which may attach expert analysis, on whether the *Gingles* factors are met in particular counties and county groupings and/or the minimum BVAP needed in particular counties and county groupings for African Americans to be able to elect candidates of their choice to the General Assembly.” Plaintiffs submitted such a brief, including expert analysis of Jowei Chen, Ph.D. (report dated September 17, 2019) and Lisa Handley, Ph.D. (report dated September 17, 2019). No other parties submitted briefs or expert analysis on this issue within the time allowed by the Court. The Court finds the analysis performed by Dr. Chen and Dr. Handley to be credible and adopts their conclusions. A separate Order shall be issued by this Court detailing the findings of fact that support these conclusions.

b. Mandate that the General Assembly may take reasonable efforts to not pair incumbents unduly in the same election district.

In its September 3, 2019, Judgment, the Court adopted the criterion that the General Assembly “may take reasonable efforts to not pair incumbents unduly in the same election district.” The Court recognizes that this criterion permits a degree of legislative discretion to enter into the remedial process and, indeed, a degree of political discretion. It

is not surprising, therefore, that each of Plaintiffs' challenges to the enacted House Remedial Maps – namely, their objections to five of fourteen House county groups redrawn pursuant to the Court's Judgment – arise largely as a result of the exercise of this legislative discretion to unpair incumbent legislators who had been paired by Dr. Chen's simulated maps.

In applying this criterion, the Court finds noteworthy and appropriate that the House Redistricting Committee recognized that changes made to base maps to unpair incumbents ought to be “extremely narrow, tailored, precise, and thoughtful.” *Video record of House Redistricting Committee, Sept. 12, 2019, 3:24:19-3:26*. Accordingly, the Committee adopted the following directives: (1) no changes would be made to the House base maps derived from Dr. Chen's dataset where no incumbent members were paired; (2) where incumbent members were paired in a single district, the paired district and the corresponding empty district would be the sole districts altered to unpair the paired members, and those alterations should be as few as possible; and, (3) a legislator who informed the Committee that he or she did not intend to run for re-election would not be treated as an incumbent for the purposes of unpairing. *See, Legislative Defendants' Memo Re House and Senate Remedial Maps, at 16 and n. 3; Video record, Sept. 12, 2019, 3:07:00-3:09:44; 3:22:48; 3:24:19-3:29:00*. These directives were applied uniformly by the House Redistricting Committee to all county groupings under its consideration. The Court finds and concludes that these directives reflect a reasonable effort by members of the Committee to preserve the nonpartisan and traditional redistricting criteria optimized in Dr. Chen's maps and are therefore consistent with the Court's mandate.

In its September 3, 2019, Judgment, the Court observed that “[a]t its most basic level, partisan gerrymandering is defined as: ‘the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power’” *Ariz.*

State Legislature v. Ariz. Indep. Redistricting Comm'n, 135 S. Ct. 2652, 2658 (U.S. 2016). With this in mind, the Court finds it significant that the House Redistricting Committee voted unanimously to adopt twelve of the fourteen remedial county groupings under its consideration and one other grouping received only one “no” vote. Only one county grouping, the Robeson-Columbus-Pender county grouping, provoked disagreement among the Committee members. The House Redistricting Committee is comprised of seventeen members – seven Democrats and ten Republicans. The Speaker Pro Tempore, a Republican, participated as an *ex officio* voting member as well. The Court finds and concludes that unanimous or nearly unanimous consensus across party lines within the Committee for thirteen of fourteen remedial county groupings is significant evidence that, for at least those thirteen groupings, partisan gerrymandering has been significantly abated.

Plaintiffs, in their *Objections to the Remedial Maps*, challenge five county groupings in the House Remedial Maps. Four of the groupings challenged were altered from Dr. Chen’s base map to unpair incumbents. One county grouping, Brunswick – New Hanover, is challenged by Plaintiffs because the General Assembly did *not* unpair incumbents. The Court considers each of Plaintiffs’ objections to these five county groupings in the House Remedial Map.

i. Brunswick-New Hanover County Grouping (HD-17, HD-18, HD-19, and HD-20)

The base map for this county grouping, which was selected in accordance with the methodology described above from Dr. Chen’s simulated maps, paired two Republican incumbents in House District 20: Representative Holly Grange and Representative Ted Davis. The base map had the highest Reock score (*i.e.*, most compact) of all possible simulations, split no VTDs, and split the lowest number of municipalities (one). The

simulated map created three Republican districts and one Democratic district, as did every other simulated map generated by Dr. Chen's Set 1 algorithm for that county grouping except one, which created four Republican districts.

Plaintiffs object to adoption of this county grouping map because the General Assembly did not unpair Rep. Grange and Rep. Davis in HD-20. Plaintiffs do not propose an alternative map that unpairs the incumbents in HD-20, but suggest that had Rep. Grange and Rep. Davis been unpaired, Democratic voters might have been distributed more efficiently in HD-18, -19 and -20, presumably making one of the three Republican districts more competitive for a Democratic candidate. By failing to unpair Rep. Grange and Rep. Davis, Plaintiffs contend, Legislative Defendants perpetuated a partisan gerrymander in this county grouping.

Rep. Grange, however, announced her intention to run for Governor in 2020 several months prior to the drafting of the Remedial Map. Although Rep. Grange initially asked the House Redistricting Committee that she be unpaired from Rep. Davis, she later withdrew her request. *Tr. House Floor, Sept. 13, 2019, Vol. II at 560:15-561:5*. Because a person cannot file for both a House seat and the Office of Governor, it was reasonable for the General Assembly to disregard Rep. Grange's incumbency and treat the county grouping as one with no paired incumbents. Therefore, consistent with the directives adopted by the House Redistricting Committee, no changes were made to the simulated base map for this county grouping. The base map for Brunswick-New Hanover, with no alterations, was unanimously adopted by the bipartisan House Redistricting Committee.

In weighing all of these factors, the Court finds and concludes that the Brunswick-New Hanover remedial districts were not adopted in violation of the Court's mandate because: (1) the remedial map for the Brunswick-New Hanover county grouping was chosen from Dr. Chen's simulated maps through a process that the Court has found to reasonably

comply with its mandate; (2) the districts within the county grouping comport with the legal requirements of equal population, contiguity, and the *Stephenson* county grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of compactness, fewer split precincts, and consideration of municipal boundaries; (3) the decision not to alter the base map was consistent with a self-imposed limitation on the Redistricting Committee's discretion that the Court has found to be appropriate and uniformly applied; (4) no alternative map that better achieved these objectives was offered by Plaintiffs; and, (5) the remedial county grouping map was adopted unanimously by the House Redistricting Committee. Therefore, the objection of Plaintiffs to this county grouping is denied.

ii. Guilford County Grouping (HD-58, HD-59 and HD-60)

The Guilford County grouping contains six total House districts, but three of these districts (HD-57, HD-61, and HD-62) are frozen in both the computer-simulated plans as well as in the enacted House Remedial Map pursuant to the Court's September 3, 2019, Judgment. The base map for this county group, which was selected from Dr. Chen's simulated maps in accordance with the methodology described above, paired two incumbents in House District 59. To unpair these two incumbents, one VTD from HD-59 was moved in HD-58. No other changes were required. The House Redistricting Committee unanimously adopted the Guilford County remedial map.

Plaintiffs object to the Guilford County remedial map adopted by the General Assembly because, they contend, in the name of unpairing incumbents, the House substantially recreated one of the invalidated 2017 districts in this grouping (HD-58), rendering this grouping a statistical outlier with respect to compactness. Plaintiffs do not contend that the alteration to the base map rendered the county grouping a statistical outlier with respect to partisanship, and the change had no effect on the number of split

VTDs (0) or split municipalities (0). Plaintiffs do not propose an alternative map that unpairs the incumbents in HD-59.

In weighing all of these factors, the Court finds and concludes that the Guilford county remedial districts were not adopted in violation of the Court's mandate because: (1) the remedial map for the Guilford county grouping was chosen from Dr. Chen's simulated maps through a process that the Court has found to reasonably comply with its mandate; (2) the districts within the county grouping comport with the legal requirements of equal population, contiguity, and the *Stephenson* county grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of fewer split precincts, and consideration of municipal boundaries; (3) the decision to unpair the incumbents in HD-59 was achieved by as few alterations as possible (in this case, one VTD), which was consistent with a self-imposed limitation on the Redistricting Committee's discretion that the Court has found to be appropriate and uniformly applied; (4) the modest reduction in compactness of HD-58 and HD-59 to achieve unpairing of incumbents was not unreasonable; (5) no alternative map that better achieved these objectives was offered by Plaintiffs; and, (6) the remedial county grouping map was adopted unanimously by the House Redistricting Committee. Therefore, the objection of Plaintiffs to this county grouping is denied.

iii. Cleveland-Gaston County Grouping (HD-108, HD-109, HD-110 and HD-111)

The base map for the Cleveland-Gaston county grouping, which was selected from Dr. Chen's simulated maps in accordance with the methodology described above, paired two incumbents in House District 111. To unpair these two incumbents, a total of thirteen VTDs were moved from the base plan and one VTD was split. Every simulated map created by Dr. Chen's algorithm for this county grouping results in four Republican districts, three of which have more than 60% Republican vote share and the fourth has more than 55%

Republican vote share in all but a handful of the 1000 maps simulated by Dr. Chen. The House Redistricting Committee unanimously adopted the Cleveland-Gaston county grouping remedial map.

Plaintiffs object to the Cleveland-Gaston county grouping remedial map adopted by the General Assembly because, they contend, the alterations made to unpair incumbents return this county grouping to the prior gerrymander by cracking the municipality of Gastonia into three districts. Plaintiffs point out that the net partisan effect is a swing downward in Democratic vote share in HD-108 from 41.24% to 35.62%, and a swing upward in Democratic vote share in HD-111 from 26.63% to 31.10%. Plaintiffs also establish the districts in the county grouping are made less compact by the alterations made to the base map. Plaintiffs do not propose an alternative map that unpairs the incumbents in HD-111.

Legislative Defendants contend the choices made by the House Redistricting Committee to alter the map to unpair incumbents required a policy decision to either split Gastonia into three districts or to split many other smaller municipalities in northern and western Gaston County. Ultimately, by altering the base map as enacted, no other municipalities were split to achieve the unpairing of the incumbents in HD-111. Legislative Defendants further note that there is no incentive to engage in partisan gerrymandering in this county grouping because of the heavy Republican concentration throughout the entire grouping.

In weighing all of these factors, the Court finds and concludes that the Cleveland-Gaston county grouping remedial districts were not adopted in violation of the Court's mandate because: (1) the remedial map for the Cleveland-Gaston county grouping was chosen from Dr. Chen's simulated maps through a process that the Court has found to reasonably comply with its mandate; (2) the districts within the county grouping comport with the legal requirements of equal population, contiguity, and the *Stephenson* county

grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of fewer split precincts, and consideration of municipal boundaries; (3) the decision to unpair the incumbents in HD-111 was achieved by alterations only to the district with the paired incumbents (HD-111) and to the district with no incumbent (HD-108), which was consistent with a self-imposed limitation on the Redistricting Committee's discretion that the Court has found to be appropriate and uniformly applied; (4) the division of Gastonia so as to avoid the division of other municipalities to achieve unpairing of incumbents was not unreasonable; (5) no alternative map that better achieved these objectives was offered by Plaintiffs; (6) no motive to disadvantage Democratic voters can be discerned in the alterations made; and, (7) the remedial county grouping map was adopted unanimously by the House Redistricting Committee. Therefore, the objection of Plaintiffs to this county grouping is denied.

iv. Forsyth-Yadkin County Grouping (HD-71, HD-72, HD-73, HD-74 and HD-75)

The base map for the Forsyth-Yadkin county grouping, which was selected from Dr. Chen's simulated maps in accordance with the methodology described above, paired two incumbents in House District 75 (one Democrat and one Republican) and two incumbents in House District 72 (one Democrat and one Republican).³ In HD-75, the incumbents each resided two VTDs away from the nearest border of the base district. In order to attempt to unpair the four incumbents, the bipartisan Forsyth-Yadkin House delegation proposed to alter the base map by moving four VTDs in HD-75, and one VTD in HD-72. During the course of the discussions amongst the members of the delegation at the mapmaking terminal, which was carried out in full public view, Representative Donny Lambeth, the

³ The House Districts were renumbered in the enacted Remedial House Maps: HD-71 to HD-72, HD-72 to HD-74, HD-74 to HD-75 and HD-75 to HD-71. For consistency, the Court uses the original district numbers in this discussion.

Republican incumbent paired in HD-75, asked to “take the 75th out to Kernersville because I’ve represented it in the past.” *Video Record of House Redistricting Committee, Sept. 12, 2019, 7:12:00-10*. Rep. Lambeth’s request was implemented by an alteration to the base map. As a result, two VTDs were removed from HD-75 and added to HD-74 (which includes Kernersville) and, to balance the population between the two districts, two VTDs from HD-74 were moved to HD-75. The base map for the Forsyth-Yadkin county grouping, as altered to unpair four incumbents, was unanimously adopted by the House Redistricting Committee.

Plaintiffs object to the Forsyth-Yadkin county grouping remedial map adopted by the General Assembly because, they contend, the alterations made to unpair incumbents were the result of partisan gerrymandering and resulted in districts that preserved cores of House districts that were declared unconstitutional. Plaintiffs show that as a result of altering four VTDs to unpair the incumbents in HD-75, the Democratic vote share in HD-75 increased from 69.09% to 71.37%, while in HD-74, the Democratic vote share decreased from 39.72% to 36.24%. This, Plaintiffs contend, is evidence of packing and cracking condemned by the Court in its September 3, 2019, Judgment. The alterations further had the effect of decreasing compactness, as compared to the base county grouping map, and split two more municipalities than the base map. Plaintiffs do not propose an alternative map that unpairs the incumbents in HD-75 and HD-72.

While there is no evidence that election result data was used by the Forsyth-Yadkin legislative delegation as they decided how to propose to unpair the incumbents in HD-75, it is reasonable to assume that the incumbents paired in HD-75, Rep. Lambeth (Republican) and Rep. Evelyn Terry (Democrat), both of whom have served in the House for four terms, knew from their extensive political experience that the two VTDs that were moved to place Rep. Lambeth into the Republican leaning HD-74 were two Republican-leaning VTDs, and

conversely, the two VTDs moved from HD-74 into HD-75 to rebalance the population were two Democratic-leaning VTDs. It is also reasonable to assume that Rep. Lambeth and Rep. Terry knew that the alternative means by which they could be unpaired would be to place Rep. Terry, the Democrat, into a safe Republican district, and to leave Rep. Lambeth, the Republican, in a safe Democratic district.

The Court concurs that the decision to alter HD-74 and HD-75 so as to place Rep. Lambeth in HD-74 and leave Rep. Terry in HD-75 was one that was likely made with partisan considerations in mind, although not with past election data on hand. The Court further recognizes that this is an example of where the Court's mandate that allows "reasonable efforts to not pair incumbents unduly in the same election district" permits, as noted above, a degree of legislative discretion to enter into the remedial process and, indeed, a degree of political discretion. And the Court concurs that traditional redistricting criteria of compactness and preserving municipal boundaries were subordinated to unpairing incumbents.

However, the constitutional defect at issue in this litigation is extreme partisan gerrymandering which, as the United States Supreme Court has said is, "[a]t its most basic level . . . the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power." *Ariz. State Legislature*, 135 S. Ct. at 2658. Here, the Court cannot conclude that the choice of how to unpair Rep. Lambeth and Rep. Terry was done to subordinate Democrats or entrench the Republican party in power. The fact that the alterations inured to the mutual benefit of both Democrats and Republicans in a plan that was proposed to the House Redistricting Committee by the bipartisan Forsyth-Yadkin House delegation, and that the plan was unanimously adopted by the full bipartisan Committee, shows that these alterations were not the result of extreme partisan gerrymandering.

In weighing all of these factors, the Court finds and concludes that the Forsyth-Yadkin county grouping remedial districts were not adopted in violation of the Court's mandate because: (1) the remedial map for the Forsyth-Yadkin county grouping was chosen from Dr. Chen's simulated maps through a process that the Court has found to reasonably comply with its mandate; (2) the districts within the county grouping comport with the legal requirements of equal population, contiguity, and the *Stephenson* county grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of fewer split precincts, and consideration of municipal boundaries; (3) the decision to unpair the incumbents in HD-71, HD-72, HD-74, and HD-75 was achieved by alterations only to the districts with the paired incumbents (HD-75 and HD-72) and the districts with no incumbent (HD-74 and HD-71), and by making the fewest alterations possible, which were consistent with self-imposed limitations on the Redistricting Committee's discretion that the Court has found to be appropriate and uniformly applied; (4) the decision to place Rep. Lambeth in HD-74 and leave Rep. Terry in HD-75 was not unreasonable; (5) no alternative map that better achieved these objectives was offered by Plaintiffs; (6) no motive to disadvantage Democratic voters can be discerned in the alterations made; and, (7) the remedial county grouping map was adopted unanimously by the House Redistricting Committee. Therefore, the objection of Plaintiffs to this county grouping is denied.

v. Columbus-Pender-Robeson County Grouping (HD-16, HD-46 and HD-47)

The base map for the Columbus-Pender-Robeson county grouping, which was selected from Dr. Chen's simulated maps in accordance with the methodology described above, paired two incumbents in HD-16. To unpair these two incumbents, eleven VTDs were altered from the base plan. Of the simulated maps created by Dr. Chen's algorithm for this county grouping, 99.5% of those simulated maps result in two Democratic districts

and one Republican district, and both the base map and enacted Remedial Map for this county grouping have this same ratio.

Plaintiffs object to the Columbus-Pender-Robeson county grouping remedial map adopted by the General Assembly because, they contend, the alterations made to unpair incumbents was an attempt to dilute Democratic voters in HD-46 by moving the Town of Whiteville VTDs into HD-16, thereby making HD-46 more competitive for Republicans. Plaintiffs show that the alterations to the base map resulted in a decrease of the Democratic vote share in HD-46 from 53.30% to 51.37% and an increase in the Democratic vote share in HD-16 from 39.44% to 40.64%.

This county grouping was the subject of extensive negotiation among the members of the House Redistricting Committee, and extensive discussion on the House Floor. Several amendments were offered by Representative Darren Jackson (D-Wake), which failed. The Columbus-Pender-Robeson county grouping remedial map was adopted by the House Redistricting Committee by a divided vote. Plaintiffs have not proposed an alternative map to the Court.

Legislative Defendants contend each possible alternative for unpairing the incumbents in HD-46 and HD-16 would have resulted in municipal splits and VTD splits. They contend that the policy decision of the Committee to preserve traditional redistricting criteria was a sound decision and should not be altered by the Court. The remedial maps proposed by Rep. Jackson would divide one municipality, Tabor City, or, alternatively, divide two VTDs. The enacted Remedial Map for the Columbus-Pender-Robeson county grouping splits no municipalities and splits no VTDs. The compactness scores, when comparing the base map to the enacted Remedial Map, are essentially the same.

In weighing all of these factors, the Court finds and concludes that the Columbus-Pender-Robeson county grouping remedial districts were not adopted in violation of the Court's mandate because: (1) the remedial map for the Columbus-Pender-Robeson county grouping was chosen from Dr. Chen's simulated maps through a process that the Court has found to reasonably comply with its mandate; (2) the districts within the county grouping comport with the legal requirements of equal population, contiguity, and the *Stephenson* county grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of compactness, fewer split precincts, and consideration of municipal boundaries; (3) the decision unpair the incumbents in HD-16 was achieved by alterations only to the district with the paired incumbents (HD-16) and the district with no incumbent (HD-46), which were consistent with a self-imposed limitation on the Redistricting Committee's discretion that the Court has found to be appropriate and uniformly applied; (4) the decision to place the Town of Whiteville in one district, and the Town of Chadbourn in another was not an unreasonable exercise of the discretion in the General Assembly's efforts to unpair incumbents while respecting traditional redistricting criteria; and, (5) no alternative map that better achieved these objectives was offered by Plaintiffs. Therefore, the objection of Plaintiffs to this county grouping is denied.

III. Senate Remedial Maps

Despite receiving no objections from Plaintiffs to the enacted Senate Remedial Maps, the Court has examined the seven county groupings and twenty-one Senate districts that were redrawn in the Senate remedial process. After reviewing the record of the Senate proceedings, the Court finds and concludes that each Senate district redrawn and enacted in the Remedial Maps comports with the Court's mandate because: (1) the Remedial Map for each Senate county grouping was chosen from Dr. Chen's simulated maps through a process that the Court has found to reasonably comply with its mandate; (2) the districts

within each county grouping comport with the legal requirements of equal population, contiguity, and the *Stephenson* county grouping and traversal requirements, and reasonably optimize the traditional redistricting criteria of compactness, fewer split precincts, and consideration of municipal boundaries; (3) all decisions to alter the base maps were narrow, reasonable, and received broad bipartisan support; (4) the entire process was conducted in full public view; and, (5) the Senate Remedial Maps were adopted by the Senate with broad bipartisan support.

BASED UPON THE FOREGOING findings and conclusions, the Court ORDERS that the House redistricting plan, N.C. Sess. Laws 2019-220 (House Bill 1020) enacted into law on September 17, 2019, and the Senate redistricting plan, N.C. Sess. Laws 2019-219 (Senate Bill 692) enacted into law on September 17, 2019, are hereby APPROVED by the Court.

SO ORDERED, this the 28th day of October, 2019.

/s/ Paul C. Ridgeway

Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite

Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton

Alma L. Hinton, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the persons indicated below by emailing a copy thereof to the address below, in accordance with the March 13, 2019 Case Management Order:

Edwin M. Speas, Jr.
Caroline P. Mackie
POYNER SPRUILL LLP
espeas@poynerspruill.com
cmackie@poynerspruill.com
Counsel for Common Cause, the North Carolina Democratic Party, and the Individual Plaintiffs

R. Stanton Jones
David P. Gersch
Elisabeth S. Theodore
Daniel F. Jacobson
ARNOLD & PORTER KAYE SCHOLER LLP
Stanton.jones@arnoldporter.com
David.gersch@arnoldporter.com
Elisabeth.theodore@arnoldporter.com
Daniel.jacobson@arnoldporter.com
Counsel for Common Cause and the Individual Plaintiffs

Marc E. Elias
Aria C. Branch
Abha Khanna
PERKINS COIE LLP
melias@perkinscoie.com
abbranch@perkinscoie.com
akhanna@perkinscoie.com
Counsel for Common Cause and the Individual Plaintiffs

Phillip J. Strach
Thomas A. Farr
Michael McKnight
Alyssa Riggins
OGLETREE DEAKINS NASH SMOAK & STEWART PC
Phillip.strach@ogletreedeakins.com
Tom.farr@ogletreedeakins.com
Michael.mcknight@ogletreedeakins.com
Alyssa.riggins@ogletree.com
Counsel for Legislative Defendants

Richard Raile
Mark Braden
Trevor Stanley
Katherine McKnight
Elizabeth Scully
BAKER & HOSTETLER LLP
rraile@bakerlaw.com
mbraden@bakerlaw.com
tstanley@bakerlaw.com
kmcknight@bakerlaw.com
escully@bakerlaw.com
Counsel for Legislative Defendants

Stephanie A. Brennan
Amar Majmundar
Paul Cox
NC DEPARTMENT OF JUSTICE
sbrennan@ncdoj.gov
amajmundar@ncdoj.gov
pcox@ncdoj.gov
Counsel for the State of North Carolina and members of the State Board of Elections

Katelyn Love
NC STATE BOARD OF ELECTIONS
legal@ncsbe.gov
Counsel for the State Board of Elections

John E. Branch, III
Nathaniel J. Pencook
Andrew D. Brown
SHANAHAN LAW GROUP PLLC
jbranch@shanahanlawgroup.com
npencook@shanahanlawgroup.com
abrown@shanahanlawgroup.com
Counsel for Defendant-Intervenors

This the 28th day of October, 2019.



Kellie Z. Myers

Trial Court Administrator – 10th Judicial District
kellie.z.myers@nccourts.org

Exhibit 5

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 012667

V.

ORDER ON INJUNCTIVE RELIEF

Procedural History

On February 19, 2016, the current North Carolina congressional districts (hereinafter “2016 congressional districts”) were established by an act of the General Assembly, N.C. Sess. Laws 2016-1 (hereinafter “S.L. 2016-1”), as a result of litigation in federal court over the congressional districts originally drawn in 2011. On September 27, 2019, Plaintiffs filed a verified complaint in Superior Court, Wake County, seeking a declaration that the 2016 congressional districts violate the rights of Plaintiffs and all Democratic voters in North Carolina under the North Carolina Constitution’s Free Elections Clause, Art. I, § 10; Equal Protection Clause, Art. I, § 19; and Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14. Plaintiffs seek to enjoin the future use of the 2016 congressional districts. On September 30, 2019, this action was assigned to the undersigned panel by the Chief Justice of the Supreme Court of North Carolina.

On September 30, 2019, Plaintiffs filed a motion for a preliminary injunction seeking to bar Defendants from administering, preparing for, or moving forward with the 2020 primary and general elections in North Carolina for the United States House of Representatives using the 2016 congressional districts. Plaintiffs also filed a motion for expedited briefing and resolution of Plaintiffs' motion for a preliminary injunction. On October 2, 2019, Defendants North Carolina State Board of Elections and its members (collectively hereinafter "State Defendants") notified the Court that, among other things, candidate filing for congressional primaries is set to begin on December 2, 2019. On October 9, 2019, a motion to intervene was filed by three incumbent Congressional Representatives seeking to intervene in this action in both their capacity as Representatives and as residents and voters in three of the congressional districts challenged in Plaintiffs' verified complaint.

On October 10, 2019, the Court granted in part Plaintiffs' motion for expedited briefing, establishing a briefing schedule on Plaintiff's motion for preliminary injunction and setting for hearing Plaintiffs' motion for preliminary injunction and the motion to intervene.

On October 14, 2019, Defendants Representative David R. Lewis, Senator Ralph E. Hise, Jr., Speaker Timothy K. Moore, President Pro Tempore Philip E. Berger, Senator Warren Daniel, and Senator Paul Newton (hereinafter "Legislative Defendants") removed this case to the United States District Court for the Eastern District of North Carolina. On October 21, 2019, State Defendants and Legislative Defendants each filed in federal court a brief in response to Plaintiffs' motion for preliminary injunction in accordance with the Court's October 10, 2019 order. Plaintiffs notified and provided to the Court the

Defendants' briefs on October 22, 2019, and, on the same date, the federal court remanded this case to state court.

On October 22, 2019, the Congressional Representatives seeking to intervene in this case submitted a brief in response to Plaintiffs' motion for preliminary injunction. On October 23, 2019, Plaintiffs filed a motion to strike the Congressional Representatives' response brief, the Congressional Representatives submitted a response brief to Plaintiffs' motion, and Plaintiffs submitted a brief in reply to that response brief. Additionally, on October 23, 2019, Plaintiffs submitted a brief in reply to Legislative Defendants' brief in response to Plaintiffs' motion for preliminary injunction.

These matters came on to be heard on October 24, 2019, during which time the Court granted the Congressional Representatives (hereinafter "Intervenor-Defendants") permissive intervention and notified the parties that Intervenor-Defendants' response brief would be considered by the Court in its discretion. Plaintiffs' motion for preliminary injunction was taken under advisement.

The Court, having considered the pleadings, motions, briefs and arguments of the parties, supplemental materials submitted by the parties, pertinent case law, and the record proper and court file, hereby finds and concludes, for the purposes of this Order, as follows.

Political Question Doctrine

Legislative Defendants contend Plaintiffs' claims—challenges to the validity of an act of the General Assembly that apportions or redistricts the congressional districts of this State—present non-justiciable political questions. Such claims are within the statutorily-provided jurisdiction of this three-judge panel, N.C.G.S. § 1-267.1, and the Court concludes that partisan gerrymandering claims specifically present justiciable issues, as

distinguished from non-justiciable political questions. Such claims fall within the broad, default category of constitutional cases our courts are empowered and obliged to decide on the merits, and not within the narrow category of exceptional cases covered by the political question doctrine. Indeed, as the Supreme Court of the United States recently explained, partisan gerrymandering claims are not “condemn[ed] . . . to echo in the void,” because although the federal courthouse doors may be closed, “state constitutions can provide standards and guidance for state courts to apply.” *Rucho v. Common Cause*, 139 S. Ct. 2484, 2507 (2019).¹

Standing of Plaintiffs

Legislative Defendants and Intervenor-Defendants contend that Plaintiffs lack standing to pursue their claims in this action. The North Carolina Constitution, however, provides: “All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.” N.C. Const. art. I, § 18. “[B]ecause North Carolina courts are not constrained by the ‘case or controversy’ requirement of Article III of the United States Constitution, our State’s standing jurisprudence is broader than federal law.” *Davis v. New Zion Baptist Church*, 811 S.E.2d 725, 727 (N.C. Ct. App. 2018) (quotation marks omitted); accord *Goldston v. State*, 361 N.C. 26, 35, 637 S.E.2d 876, 882 (2006) (“While federal standing doctrine can be instructive as to general principles . . . and for comparative analysis, the nuts and bolts of North Carolina standing doctrine are not coincident with federal standing doctrine.”).

¹ Likewise, Legislative Defendants’ and Intervenor-Defendants’ contentions that federal law—*i.e.*, the Elections clause and Supremacy clause of the United States Constitution—serves as a bar in state court to Plaintiffs’ action seeking to enjoin the 2016 congressional districts on state constitutional grounds is equally unavailing. Our state courts have jurisdiction to hear and decide claims that acts of the General Assembly apportioning or redistricting the congressional districts of this State run afoul of the North Carolina Constitution.

The North Carolina Supreme Court has broadly interpreted Article I, § 18 to mean that “[a]s a general matter, the North Carolina Constitution confers standing on those who suffer harm.” *Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640, 642, 669 S.E.2d 279, 281 (2008). The “gist of the question of standing” under North Carolina law is whether the party seeking relief has “alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.” *Goldston*, 361 N.C. at 30, 637 S.E.2d at 879 (quoting *Stanley v. Dep’t of Conservation & Dev.*, 284 N.C. 15, 28, 199 S.E.2d 641, 650 (1973)). Although the North Carolina Supreme Court “has declined to set out specific criteria necessary to show standing in every case, [it] has emphasized two factors in its cases examining standing: (1) the presence of a legally cognizable injury; and (2) a means by which the courts can remedy that injury.” *Davis*, 811 S.E.2d at 727-28.

Plaintiffs in this case have standing to challenge the congressional districts at issue because Plaintiffs have shown a likelihood of “a personal stake in the outcome of the controversy,” *Goldston*, 361 N.C. at 30, 637 S.E.2d at 879, and a likelihood that the 2016 congressional districts cause them to “suffer harm,” *Mangum*, 362 N.C. at 642, 669 S.E.2d at 281.

Applicable Legal Standards

At its most basic level, partisan gerrymandering is defined as: “the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power.” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 135 S. Ct. 2652, 2658 (U.S. 2016). Partisan gerrymandering operates through vote dilution—the devaluation of one citizen’s vote as compared to others. A mapmaker draws district lines to

“pack” and “crack” voters likely to support the disfavored party. *See generally Gill v. Whitford*, 138 S. Ct. 1916 (2018).

Plaintiffs claim the 2016 congressional districts are partisan gerrymanders that violate the rights of Plaintiffs and all Democratic voters in North Carolina under the North Carolina Constitution’s Free Elections Clause, Art. I, § 10; Equal Protection Clause, Art. I, § 19; and Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14. Extreme partisan gerrymandering violates each of these provisions of the North Carolina Constitution. *See Common Cause v. Lewis*, 18-CVS-014001, slip. op. at 298-331 (N.C. Sup. Ct. Sept. 3, 2019).

Free Elections Clause

The North Carolina Constitution, in the Declaration of Rights, Article I, § 10, declares that “[a]ll elections shall be free.” Our Supreme Court has long recognized the fundamental role of the will of the people in our democratic government: “Our government is founded on the will of the people. Their will is expressed by the ballot.” *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 220 (1875). In particular, our Supreme Court has directed that in construing provisions of the Constitution, “we should keep in mind that this is a government of the people, in which the will of the people--the majority--legally expressed, must govern.” *State ex rel. Quinn v. Lattimore*, 120 N.C. 426, 428, 26 S.E. 638, 638 (1897) (citing N.C. Const. art. I, § 2). Therefore, our Supreme Court continued, because elections should express the will of the people, it follows that “all acts providing for elections, should be liberally construed, that tend to promote a fair election or expression of this popular will.” *Id.* “[F]air and honest elections are to prevail in this state.” *McDonald v. Morrow*, 119 N.C. 666, 673, 26 S.E. 132, 134 (1896). Moreover, in giving meaning to the Free Elections Clause, this Court’s construction of the words contained therein must

therefore be broad to comport with the following Supreme Court mandate: “We think the object of all elections is to ascertain, fairly and truthfully, the will of the people--the qualified voters.” *Hill v. Skinner*, 169 N.C. 405, 415, 86 S.E. 351, 356 (1915) (quoting *R. R. v. Comrs.*, 116 N.C. 563, 568, 21 S.E. 205, 207 (1895)).

As such, the meaning of the Free Elections Clause is that elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. In contrast, extreme partisan gerrymandering—namely redistricting plans that entrench politicians in power, that evince a fundamental distrust of voters by serving the self-interest of political parties over the public good, and that dilute and devalue votes of some citizens compared to others—is contrary to the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. *See Common Cause*, 18-CVS-014001, slip. op. at 298-307.

Equal Protection Clause

The Equal Protection Clause of the North Carolina Constitution guarantees to all North Carolinians that “[n]o person shall be denied the equal protection of the laws.” N.C. Const., art. I, § 19. Our Supreme Court has held that North Carolina’s Equal Protection Clause protects “the fundamental right of each North Carolinian to *substantially equal voting power*.” *Stephenson v. Bartlett*, 355 N.C. 354, 379, 562 S.E.2d 377, 394 (2002) (emphasis added). “It is well settled in this State that ‘the right to vote *on equal terms* is a fundamental right.’” *Id.* at 378, 562 S.E.2d at 393 (quoting *Northampton Cnty. Drainage Dist. No. One v. Bailey*, 326 N.C. 742, 747, 392 S.E.2d 352, 356 (1990) (emphasis added)).

Although the North Carolina Constitution provides greater protection for voting rights than the federal Equal Protection Clause, our courts use the same test as federal courts in evaluating the constitutionality of challenged classifications under an equal

protection analysis. *Duggins v. N.C. State Bd. of Certified Pub. Accountant Exam'rs*, 294 N.C. 120, 131, 240 S.E.2d 406, 413 (1978); *Richardson v. N.C. Dep't of Corr.*, 345 N.C. 1 28, 134, 478 S.E.2d 501, 505 (1996). Generally, this test has three parts: (1) intent, (2) effects, and (3) causation. First, the plaintiffs challenging a districting plan must prove that state officials' "predominant purpose" in drawing district lines was to "entrench [their party] in power" by diluting the votes of citizens favoring their rival. *Ariz. State Legis.*, 135 S. Ct. at 2658. Second, the plaintiffs must establish that the lines drawn in fact have the intended effect by "substantially" diluting their votes. *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 861 (M.D.N.C. 2018). Finally, if the plaintiffs make those showings, the State must provide a legitimate, non-partisan justification (*i.e.*, that the impermissible intent did not cause the effect) to preserve its map. *Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting).

Generally, partisan gerrymandering runs afoul of the State's obligation to provide all persons with equal protection of law because, by seeking to diminish the electoral power of supporters of a disfavored party, a partisan gerrymander treats individuals who support candidates of one political party less favorably than individuals who support candidates of another party. *Cf. Lehr v. Robertson*, 463 U.S. 248, 265, 103 S. Ct. 2985 (1983) ("The concept of equal justice under law requires the State to govern impartially.")

As such, extreme partisan gerrymandering runs afoul of the North Carolina Constitution's guarantee that no person shall be denied the equal protection of the laws. *See Common Cause*, 18-CVS-014001, slip. op. at 307-17.

Freedom of Speech and Freedom of Assembly Clauses

The Freedom of Speech Clause in Article I, § 14 of the North Carolina Constitution provides that "[f]reedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained." The Freedom of Assembly Clause in Article I, § 12

provides, in relevant part, that “[t]he people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.”

“There is no right more basic in our democracy than the right to participate in electing our political leaders”—including, of course, the right to “vote.” *McCutcheon v. FEC*, 572 U.S. 185, 191, 134 S. Ct. 1434, 1440 (2014) (plurality op.). “[P]olitical belief and association constitute the core of those activities protected by the First Amendment.” *Elrod v. Burns*, 427 U.S. 347, 356, 96 S. Ct. 2673, 2681 (1976). In North Carolina, the right to assembly encompasses the right of association. *Feltman v. City of Wilson*, 238 N.C. App. 246, 253, 767 S.E.2d 615, 620 (2014). Moreover, “citizens form parties to express their political beliefs and to assist others in casting votes in alignment with those beliefs.” *Libertarian Party of N.C. v. State*, 365 N.C. 41, 49, 707 S.E.2d 199, 204-05 (2011). And “for elections to express the popular will, the right to assemble and consult for the common good must be guaranteed.” John V. Orth, *The North Carolina State Constitution* 48 (1995).

It is “axiomatic” that the government may not infringe on protected activity based on the individual’s viewpoint. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828, 115 S. Ct. 2510, 2516 (1995). The guarantee of free expression “stands against attempts to disfavor certain subjects or viewpoints.” *Citizens United v. FEC*, 558 U.S. 310, 340, 130 S. Ct. 876, 898 (2010). Viewpoint discrimination is *most* insidious where the targeted speech is political; “in the context of political speech, . . . [b]oth history and logic” demonstrate the perils of permitting the government to “identif[y] certain preferred speakers” while burdening the speech of “disfavored speakers.” *Id.* at 340-41, 130 S. Ct. at 899.

The government may not burden the “speech of some elements of our society in order to enhance the relative voice of others” in electing officials. *McCutcheon*, 572 U.S. at 207, 134 S. Ct. at 1450; *see also Winborne v. Easley*, 136 N.C. App. 191, 198, 523 S.E.2d 149, 154 (1999) (“political speech” has “such a high status” that free speech protections have their “fullest and most urgent application” in this context (quotation marks omitted)). The government also may not retaliate based on protected speech and expression. *See McLaughlin*, 240 N.C. App. at 172, 771 S.E.2d at 579-80. Courts carefully guard against retaliation by the party in power. *See Elrod*, 427 U.S. at 356, 96 S. Ct. at 2681; *Branti v. Finkel*, 445 U.S. 507, 100 S. Ct. 1287 (1980); *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 110 S. Ct. 2729 (1990). When patronage or retaliation restrains citizens’ freedoms of belief and association, it is “at war with the deeper traditions of democracy embodied in the First Amendment.” *Elrod*, 427 U.S. at 357, 96 S. Ct. at 2682 (quotation marks omitted).

When a legislature engages in extreme partisan gerrymandering, it identifies certain preferred speakers (e.g. Republican voters) while targeting certain disfavored speakers (e.g. Democratic voters) because of disagreement with the views they express when they vote. Then, disfavored speakers are packed and cracked into legislative districts with the aim of diluting their votes and, in cracked districts, ensuring that these voters are significantly less likely, in comparison to favored voters, to be able to elect a candidate who shares their views. Moreover, a legislature that engages in extreme partisan gerrymandering burdens the associational rights of disfavored voters to “instruct their representatives, and to apply to the General Assembly for redress of grievances.” N.C. Const. art. I, § 12. As such, extreme partisan gerrymandering runs afoul of these important guarantees in the North Carolina Constitution of the freedom of speech and the right of the people of our State to assemble together to consult for their common good, to instruct their

representatives, and to apply to the General Assembly for redress of grievances. *See Common Cause*, 18-CVS-014001, slip. op. at 317-31.

Injunctive Relief

“It is well settled in this State that the courts have the power, and it is their duty in proper cases, to declare an act of the General Assembly unconstitutional—but it must be plainly and clearly the case. If there is any reasonable doubt, it will be resolved in favor of the lawful exercise of their powers by the representatives of the people.” *City of Asheville v. State*, 369 N.C. 80, 87-88, 794 S.E.2d 759, 766 (2016) (quoting *Glenn v. Bd. of Educ.*, 210 N.C. 525, 529-30, 187 S.E. 781, 784 (1936)); *State ex rel. Martin v. Preston*, 325 N.C. 438, 449, 385 S.E.2d 473, 478 (1989).

“The purpose of a preliminary injunction is ordinarily to preserve the *status quo* pending trial on the merits. Its issuance is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities.” *State ex rel. Edmisten v. Fayetteville Street Christian School*, 299 N.C. 351, 357, 261 S.E.2d 908, 913 (1980). A preliminary injunction is an “extraordinary remedy” and will issue “only (1) if a plaintiff is able to show *likelihood* of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff’s rights during the course of litigation.” *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759-60 (1983) (emphasis in original); *see also* N.C.G.S. § 1A-1, Rule 65(b). When assessing the preliminary injunction factors, the trial judge “should engage in a balancing process, weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted. In effect, the harm alleged by the plaintiff must satisfy a

standard of relative substantiality as well as irreparability.” *Williams v. Greene*, 36 N.C. App. 80, 86, 243 S.E.2d 156, 160 (1978).

Status Quo

The 2011 congressional districts, enacted by the General Assembly on July 28, 2011, were struck down as unconstitutional racial gerrymanders and ordered to be redrawn on February 5, 2016. *See Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016). As a result, the 2016 congressional districts were then enacted by the General Assembly on February 19, 2016. N.C. Sess. Laws 2016-1. Plaintiffs’ challenge to the 2016 congressional districts is a challenge to S.L. 2016-1 as enacted; hence, the status quo which Plaintiffs desire to preserve is the existing state of affairs prior to the enactment of S.L. 2016-1. Therefore, the existing state of affairs—*i.e.*, the status quo—prior to the enactment of S.L. 2016-1 was the period in which no lawful congressional district map for North Carolina existed absent the enactment of a remedial map by the General Assembly.

Plaintiffs are Likely to Succeed on the Merits

Quite notably in this case, the 2016 congressional districts have already been the subject of years-long litigation in federal court arising from challenges to the districts on partisan gerrymandering grounds. *See Rucho*, 318 F. Supp. 3d 777. As such, there is a detailed record of both the partisan intent and the intended partisan effects of the 2016 congressional districts drawn with the aid of Dr. Thomas Hofeller and enacted by the General Assembly. *See Rucho*, 318 F. Supp. 3d at 803-10 (detailing the history of the drawing and enactment of the 2016 congressional districts); *see also* Declaration of Elisabeth S. Theodore (attaching as exhibits a number of documents from the record in federal court); *Rucho*, 139 S. Ct. at 2491-93.

For instance, Dr. Hofeller was directed by legislators “to use political data — precinct-level election results from all statewide elections, excluding presidential elections, dating back to January 1, 2008 — in drawing the remedial plan,” and was further instructed to “use that political data to draw a map that would maintain the existing partisan makeup of the state's congressional delegation, which, as elected under the racially gerrymandered plan, included 10 Republicans and 3 Democrats.” *Rucho*, 318 F. Supp. 3d at 805 (internal citations omitted).

As another example, the redistricting committee approved several criteria for the map-drawing process, including the use of past election data (*i.e.*, “Political Data”) and another labeled “Partisan Advantage,” which was defined as: “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.” *Id.* at 807. In explaining these two criteria, Representative David Lewis “‘acknowledged freely that this would be a political gerrymander,’ which he maintained was ‘not against the law,’” *id.* at 808 (citation omitted), while also going on to state that he “propose[d] that [the Committee] draw the maps to give a partisan advantage to 10 Republicans and 3 Democrats because [he] d[id] not believe it[would be] possible to draw a map with 11 Republicans and 2 Democrats,” *id.* (alterations in original).

Moreover, when drawing the 2016 congressional districts, Dr. Hofeller used “an aggregate variable he created to predict partisan performance” all while “constantly aware of the partisan characteristics of each county, precinct, and VTD.” *Id.* at 805-06.

Finally, the redistricting committee, and ultimately the General Assembly as a whole, approved the 2016 congressional districts by party-line vote. *Id.* at 809.

In light of the above, this Court agrees with Plaintiffs and finds there is a substantial likelihood that Plaintiffs will prevail on the merits of this action by showing beyond a reasonable doubt that the 2016 congressional districts are extreme partisan gerrymanders in violation of the North Carolina Constitution's Free Elections Clause, Art. I, § 10; Equal Protection Clause, Art. I, § 19; and Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14.

Plaintiffs Will Suffer Irreparable Loss Unless the Injunction is Issued

The loss to Plaintiffs' fundamental rights guaranteed by the North Carolina Constitution will undoubtedly be irreparable if congressional elections are allowed to proceed under the 2016 congressional districts. As discussed above, Plaintiffs' have shown a likelihood of succeeding on the merits of their claims that these districts violate multiple fundamental rights guaranteed by the North Carolina Constitution. And as Defendants have emphasized, the 2020 primary elections for these congressional districts—the final congressional elections of this decade before the 2020 census and subsequent decennial redistricting—are set to be held in March of 2020 with the filing period beginning December 2, 2019.

As such, this Court finds that Plaintiffs are likely to sustain irreparable loss to their fundamental rights guaranteed by the North Carolina Constitution unless the injunction is issued, and likewise, issuance is necessary for the continued protection of Plaintiffs' fundamental rights guaranteed by the North Carolina Constitution during the course of the litigation.

A Balancing of the Equities Weighs in Favor of Plaintiffs

On one hand, Legislative Defendants contend a general harm to them will result from issuing the injunction because the General Assembly will be prevented from

effectuating an act of the General Assembly. On the other hand, Plaintiffs' and all North Carolinians' fundamental rights guaranteed by the North Carolina Constitution will be irreparably lost, as discussed above, if the injunction is not granted. Simply put, the people of our State will lose the opportunity to participate in congressional elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. The Court finds that this specific harm to Plaintiffs absent issuance of the injunction outweighs the potential harm to Legislative Defendants if the injunction is granted.

Legislative Defendants and Intervenor Defendants also contend the issuance of the injunction will result in disruption, confusion, and uncertainty in the electoral process for them, candidates, election officials, and the voting public. But, again, such a proffered harm does not outweigh the specific harm to Plaintiffs from the irreparable loss of their fundamental rights guaranteed by the North Carolina Constitution. Moreover, while State Defendants would prefer not to move elections or otherwise change the current schedule for the 2020 congressional primary election, they recognize that proceeding under the 2016 congressional districts "would require the Board to administer an election that violates the constitutional rights of North Carolina voters" and acknowledge that the election schedule can be changed if necessary. State Defs. Response Brief at 2. In that vein, State Defendants agree with Plaintiffs that "it would be appropriate for this Court to issue an injunction that relieves the Board of any duty to administer elections using an unconstitutionally gerrymandered congressional redistricting plan." *Id.*

Finally, Legislative Defendants and Intervenor-Defendants contend Plaintiffs simply waited too long to bring their challenge to the 2016 congressional districts in state court. Plaintiffs, however, filed this action in state court only a matter of months after litigation reached its conclusion in federal court, at a time still prior to the candidate filing

period. While the timing of Plaintiffs' action does weigh against Plaintiffs, the Court does not find that the timing of Plaintiffs' filing of this action should bar them from seeking equitable relief in the form of the requested preliminary injunction.

Consequently, after weighing the potential harm to Plaintiffs if the injunction is not issued against the potential harm to Defendants if injunctive relief is granted, this Court concludes the balance of the equities weighs in Plaintiffs' favor. Indeed, the harm alleged by Plaintiffs is both substantial and irreparable should congressional elections in North Carolina proceed under the 2016 congressional districts.

Conclusion

Under these circumstances, the Court, in its discretion and after a careful balancing of the equities, concludes that the requested injunctive relief shall issue in regard to the 2016 congressional districts. The Court further concludes that security is required of Plaintiffs pursuant to Rule 65(c) of the North Carolina Rules of Civil Procedure to secure the payment of costs and damages in the event it is later determined this relief has been improvidently granted.

This Court recognizes the significance and the urgency of the issues presented by this litigation, particularly when considering the impending 2020 congressional primary elections and all accompanying deadlines, details, and logistics. This Court also is mindful of its responsibility not to disturb an act of the General Assembly unless it plainly and clearly, without any reasonable doubt, runs counter to a constitutional limitation or prohibition. For these reasons, the Court will, upon the forthcoming filing of Plaintiffs' motion for summary judgment, provide for an expedited schedule so that Plaintiffs' dispositive motion may be heard prior to the close of the filing period for the 2020 primary election.

This Court observes that the consequences, as argued by Legislative Defendants and Intervenor-Defendants, resulting from a delay in the congressional primary—*e.g.*, decreased voter turnout, additional costs and labor for the State Board of Elections—would be both serious and probable should the primary schedule be adjusted as a result of this Order and Plaintiffs’ ultimate success on the merits of this action. But as discussed above, should Plaintiffs prevail through motion or trial, these consequences pale in comparison to voters of our State proceeding to the polls to vote, yet again, in congressional elections administered pursuant to maps drawn in violation of the North Carolina Constitution.

This Court, however, notes that these disruptions to the election process need not occur, nor may an expedited schedule for summary judgment or trial even be needed, should the General Assembly, on its own initiative, act immediately and with all due haste to enact new congressional districts. This Court does not presume, at this early stage of this litigation, to have any authority to compel the General Assembly to commence a process of enacting new Congressional districts, and this Court recognizes that such a decision is wholly within the discretion of a co-equal branch of government. The General Assembly, however, has recently shown it has the capacity to enact new legislative districts in a short amount of time in a transparent and bipartisan manner, and that the resulting legislative districts, having been approved by this Court, are districts that are more likely to achieve the constitutional objective of allowing for elections to be conducted more freely and honestly to ascertain, fairly and truthfully, the will of the people. *See Common Cause v. Lewis*, 18-CVS-014001 (N.C. Sup. Ct., October 28, 2019). The Court respectfully urges the General Assembly to adopt an expeditious process, as it did in response to this Court’s mandate in the September 3, 2019, Judgment in *Common Cause v. Lewis*, that ensures full transparency and allows for bipartisan participation and consensus to create new

congressional districts that likewise seek to achieve this fundamental constitutional objective.

Accordingly, the Court, in its discretion and for good cause shown, hereby ORDERS that Plaintiffs' motion for preliminary injunction is GRANTED as follows:

1. Legislative Defendants and State Defendants, their officers, agents, servants, employees and attorneys and any person in active concert or participation with them are hereby enjoined from preparing for or administering the 2020 primary and general elections for congressional districts under the 2016 congressional districts established by S.L. 2016-1.
2. Security in an amount of \$1,000 shall be required of Plaintiffs pursuant to Rule 65.
3. The Court retains jurisdiction to move the primary date for the congressional elections, or all of the State's 2020 primaries, including for offices other than Congressional Representatives, should doing so become necessary to provide effective relief in this case.

SO ORDERED, this the 28th day of October, 2019.

/s/ Paul C. Ridgeway

Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite

Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton

Alma L. Hinton, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the parties by emailing a copy thereof to the address below, in accordance with the October 10, 2019 Case Management Order:

Burton Craige
Narenda K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs

R. Stanton Jones*
Elisabeth S. Theodore*
Daniel F. Jacobson*
William Perdue*
Sara Murphy D’Amico*
Graham White*
ARNOLD & PORTER KAYE SCHOLER LLP
Stanton.jones@arnoldporter.com
Elisabeth.theodore@arnoldporter.com
Daniel.jacobson@arnoldporter.com
William.Perdue@arnoldporter.com
Sara.DAmico@arnoldporter.com
Graham.White@arnoldporter.com
Counsel for Plaintiffs

Phillip J. Strach
Thomas A. Farr
Michael McKnight
Alyssa Riggins
OGLETREE DEAKINS NASH SMOAK & STEWART PC
Phil.strach@ogletree.com
Thomas.farr@ogletree.com
Michael.mcknight@ogletree.com
Alyssa.riggins@ogletree.com
Counsel for Legislative Defendants

*Admitted Pro Hac Vice

Amar Majmundar

Stephanie A. Brennan

Paul M. Cox

NORTH CAROLINA DEPARTMENT OF JUSTICE

amajmundar@ncdoj.gov

sbrennan@ncdoj.gov

pcox@ncdoj.gov

Counsel for the State Board of Elections and members of the State Board of Elections

Kieran J. Shanahan

John E. Branch, III

Nathaniel J. Pencook

Andrew D. Brown

SHANAHAN LAW GROUP PLLC

kieran@shanahanlawgroup.com

jbranch@shanahanlawgroup.com

npencook@shanahanlawgroup.com

abrown@shanahanlawgroup.com

Counsel for Intervenor-Defendants

This the 28th day of October, 2019.



Kellie Z. Myers

Trial Court Administrator – 10th Judicial District

kellie.z.myers@nccourts.org

Exhibit 6

STATE OF NORTH CAROLINA

COUNTY OF WAKE

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIRMAN OF THE HOUSE
SELECT COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

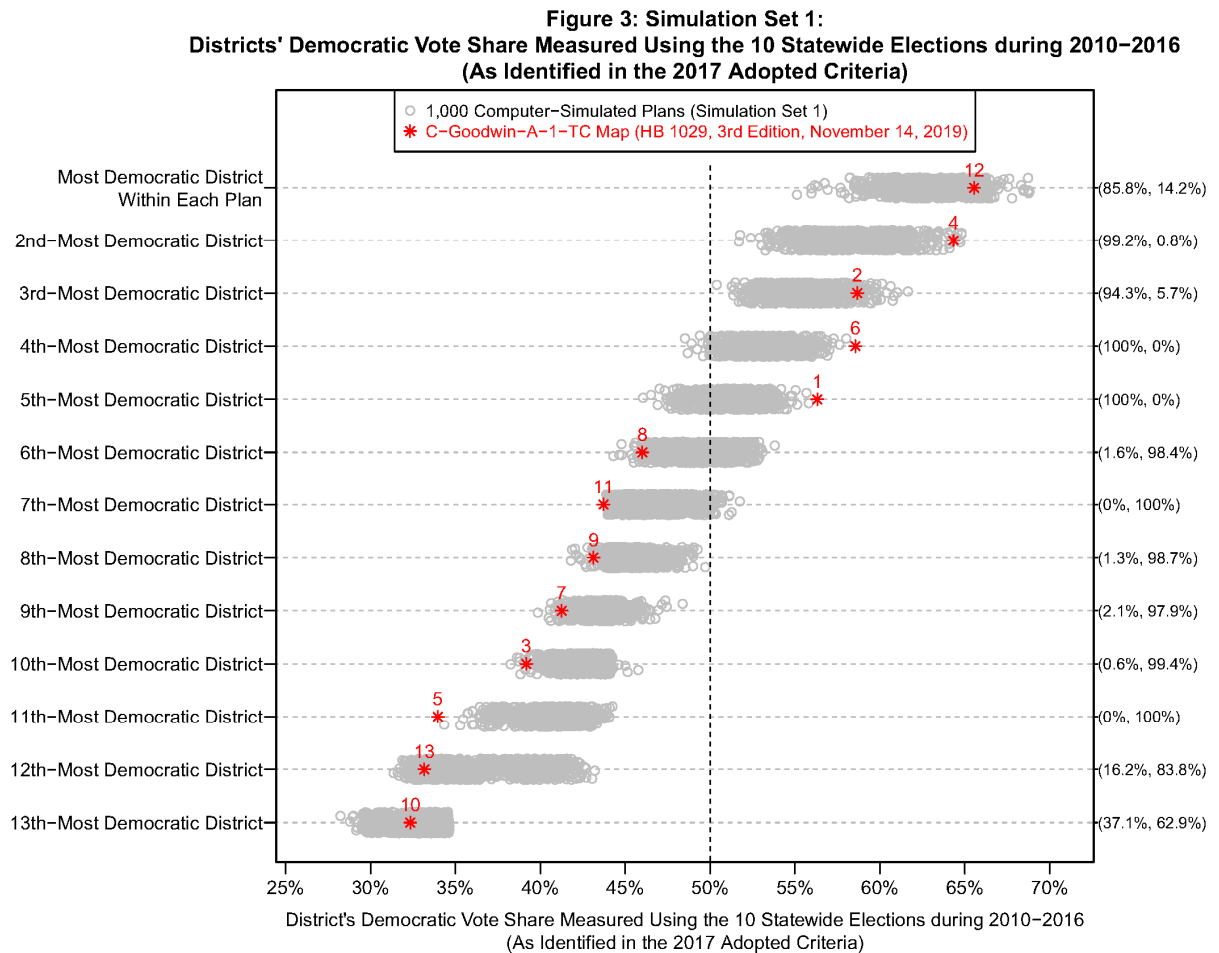
No. 19 CVS 012667

2019 NOV 15 P 4:20

**PLAINTIFFS' MOTION TO
SET SCHEDULE FOR
REVIEW OF
REMEDIAL PLAN**

Plaintiffs respectfully request that the Court set a schedule for review of the remedial congressional plan adopted by the General Assembly on November 15, 2019 (the “Remedial Plan”). As in *Common Cause v. Lewis*, the review process here should include briefing by the parties and appointment of a Referee to assist the Court. Plaintiffs further request that the Court hear argument on the Remedial Plan at the December 2, 2019 hearing on summary judgment.

This Court’s review is urgently needed because the Remedial Plan is another extreme and obvious partisan gerrymander that violates the constitutional rights of North Carolina voters. Working largely in secret, Legislative Defendants packed and cracked Democratic voters, substantially recreating several of the same gerrymandered districts. As the chart below shows, nearly every district is an extreme partisan outlier compared to Dr. Chen’s nonpartisan plans:



As Plaintiffs will explain in their objections brief, this Remedial Plan clearly violates the North Carolina Constitution under the principles announced by this Court in *Common Cause v. Lewis*. Rather than a 10-3 partisan gerrymander, the Remedial Plan is simply an 8-5 partisan gerrymander. If the Remedial Plan were to be accepted, North Carolina voters would be forced to vote, yet again, in unconstitutional elections that predetermine election outcomes and disregard the will of the people.

Legislative Defendants have indicated they will argue that enactment of the Remedial Plan moots this lawsuit, but it does not. Plaintiffs have not received all of the relief requested in their Verified Complaint, including a declaration that the 2016 Plan violated the North Carolina Constitution and the establishment of “a new congressional districting plan that complies with the North Carolina Constitution, if the North Carolina General Assembly fails to enact new congressional districting plans comporting with the North Carolina Constitution.” Two North Carolina redistricting decisions from just last year—this Court’s decision in *Dickson* and the U.S. Supreme Court’s decision in *Covington*—make clear that this Court retains jurisdiction both to enter the requested declaration concerning the 2016 Plan and to ensure that the Remedial Plan cures the constitutional violations.

Plaintiffs respectfully request that the Court set a briefing schedule on objections, appoint a Referee, and hear argument on these issues at the December 2, 2019 hearing.

BACKGROUND

In their Verified Complaint in this action, Plaintiffs included six requests in the Prayer for Relief:

- a. Declare that the 2016 Plan is unconstitutional and invalid because it violates the rights of Plaintiffs and all Democratic voters in North Carolina under the North Carolina

Constitution’s Free Elections Clause, Art. I, § 10; Equal Protection Clause, Art. I, § 19; and Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14;

- b. Enjoin Defendants, their agents, officers, and employees from administering, preparing for, or moving forward with the 2020 primary and general elections for Congress using the 2016 Plan;
- c. Establish a new congressional districting plan that complies with the North Carolina Constitution, if the North Carolina General Assembly fails to enact new congressional districting plans comporting with the North Carolina Constitution in a timely manner;
- d. Enjoin Defendants, their agents, officers, and employees from using past election results or other political data in any future redistricting of North Carolina’s congressional districts to intentionally dilute the voting power of citizens or groups of citizens based on their political beliefs, party affiliation, or past votes.
- e. Enjoin Defendants, their agents, officers, and employees from otherwise intentionally diluting the voting power of citizens or groups of citizens in any future redistricting of North Carolina’s congressional districts based on their political beliefs, party affiliation, or past votes.
- f. Grant Plaintiffs such other and further relief as the Court deems just and appropriate.

Compl., Prayer for Relief.

On October 28, 2019, this Court granted Plaintiffs’ motion for a preliminary injunction, prohibiting use of the 2016 Plan in the 2020 elections. The Court’s order noted that the General Assembly had “discretion” to adopt a remedial plan before entry of a final judgment, and “respectfully urge[d] the General Assembly to adopt an expeditious process” that “ensures full

transparency and allows for bipartisan participation and consensus to create new congressional districts” that comply with the North Carolina Constitution. Order on Inj. Relief at 17-18.

On October 30, 2019, Speaker Moore announced that Legislative Defendants would create a joint House and Senate Select Committee to draw a remedial plan (the “Select Committee”). As part of this announcement, Speaker Moore reportedly stated: “My thought is to go ahead and go forward drawing districts . . . *maybe we can moot the lawsuit.*”¹

The process employed by the Select Committee leaders was neither transparent nor bipartisan. At the outset of the very first meeting on November 5, 2019, Republican Senators made clear that they had already decided to use as the “base map” a plan that was drawn at a simulation exercise organized by Common Cause in 2016 (the “Common Cause Map”). The partisanship of every district in the Common Cause Map has been subject to extensive evaluation, including in the federal *Rucho* litigation, where Legislative Defendants themselves commented on the partisan leanings of the map. Moreover, even though the Select Committee adopted criteria that banned any use of racial data in constructing the new districts, the drawers of the Common Cause Map had explicitly used racial data in drawing several of the districts.

Starting from this base map, Senators Hise and Newton then made substantial revisions, overhauling many of the districts. They did so without input from any Democratic members. Instead, Senators Hise and Newton amended the base map based on secret discussions with unknown individuals outside of the public hearing room. Throughout the revisions process, Senators Hise and Newton repeatedly left the public hearing room to go to a back room, returning 15 or 20 minutes later and directing staff to implement specific changes that had been developed outside of public view. Seemingly every time Senator Hise departed for the back

¹ <https://twitter.com/ludkmr/status/1189651617970298885> (emphasis added).

room, he asked for seven hard copies of the latest version of the map to take with him. The identities of the seven people who were in that back room is unknown.

The House and Senate Standing Committees on Redistricting each passed the Hise-Newton map on straight party-line votes on November 14 and 15, 2019. The full House and Senate passed the Remedial Plan as House Bill 2019, on November 14 and 15, 2019, again on straight party-line votes. No Democrat in either chamber voted for the Remedial Plan.

ARGUMENT

I. The Court Should Appoint a Referee and Issue a Schedule for Legislative Defendants to Submit the Remedial Plan and for Objections

This Court should enter an order to govern review of the Remedial Plan similar to the Court's September 13, 2019 order in *Common Cause v. Lewis*. It would have three main parts:

First, the Court should direct Legislative Defendants to submit to the Court, no later than three days from this filing, the block equivalency files, shapefiles, and color maps in .PDF format for the Remedial Plan. The Court should further direct Legislative Defendants to submit to the Court, no later than one week from this filing, the following materials:

- Transcripts of all Select Committee hearings, House and Senate Standing Redistricting Committee hearings, and floor debates;
- The stat pack for the Remedial Plan and relevant prior plans;
- The criteria applied in drawing the Remedial Plan;
- A description of the process for drawing and enacting the Remedial Plan, including the choice of a base map and how the Remedial Plan purportedly complies with each of the adopted criteria;

- The identity of all participants involved in the process of drawing and enacting the Remedial Plan, including the identifies of all persons consulted during the mapdrawing process outside of public view; and
- Any alternative maps considered by the Select Committee, the House and Senate Standing Redistricting Committees, or the General Assembly.

Second, the Court should set a briefing schedule for objections to the Remedial Plan.

Plaintiffs respectfully suggest that objections be due ten days from this filing (*i.e.*, on November 25, 2019), and that any responses be due four days after that (*i.e.*, on November 29, 2019).

Plaintiffs request that the Court then hear argument on the objections and any related issues at the December 2, 2019 hearing.

Third, the Court should immediately appoint a Referee to (1) assist the Court in reviewing the Remedial Plan; and (2) develop a remedial plan for the Court should the Court determine that the General Assembly's Remedial Plan does not cure the constitutional violations found in this case or is otherwise impermissible. Plaintiffs respectfully submit that the Court should again appoint Dr. Persily to serve as Referee.

II. This Case Is Not Moot

Based on recent public statements, Plaintiffs anticipate that Legislative Defendants will argue this case is now moot because the General Assembly enacted the Remedial Plan to replace the 2016 Plan. But that is not so. Under hornbook mootness principles and directly on-point precedent, the passage of the Remedial Plan does not moot this case, and this Court retains

jurisdiction to ensure the adoption of a remedial plan that cures the constitutional violations alleged in the Complaint.

It is well-settled that actions by defendants subsequent to the filing of a lawsuit do not moot a case unless they “provide plaintiffs the relief they sought” in the complaint. *Wilson v. N.C. Dep’t of Commerce*, 239 N.C. App. 456, 460, 768 S.E.2d 360, 364 (2015); accord *Lambeth v. Town of Kure Beach*, 157 N.C. App. 349, 352, 578 S.E.2d 688, 690 (2003). This principle applies with full force where plaintiffs challenge a statute and the General Assembly then repeals or amends the statute. “The repeal of a challenged statute does not have the effect of moot[ing] a claim . . . if the repeal of the challenged statute does not provide the injured party with adequate relief or the injured party’s claim remains viable.” *Bailey & Assocs., Inc. v. Wilmington Bd. of Adjustment*, 202 N.C. App. 177, 182, 689 S.E.2d 576, 582 (2010). In other words, a case is not moot if a “statutory amendment does not provide plaintiffs the relief they sought.” *Wilson*, 239 N.C. App. at 460, 768 S.E.2d at 364.

The enactment of the Remedial Plan does not provide Plaintiffs all the relief sought in the Complaint. Of the six requests in Plaintiffs’ Prayer for Relief, only the second request, which sought a permanent injunction against use of the 2016 Plan in the 2020 elections, is even arguably moot. The other five requested forms of relief all remain unfulfilled. In particular, the Complaint requested that this Court “declare that the 2016 Plan is unconstitutional and invalid,” and that the Court “[e]stablish a new congressional districting plan that complies with the North Carolina Constitution, if the North Carolina General Assembly fails to enact new congressional districting plans comporting with the North Carolina Constitution in a timely manner.” Compl., Prayer for Relief ¶¶ a, c. As Plaintiffs will set forth more fully in their objections to the Remedial Plan, the General Assembly has “fail[ed] to enact new congressional districting plans

comporting with the North Carolina Constitution” because the Remedial Plan is another extreme partisan gerrymander. Accordingly, Plaintiffs’ request that this Court “[e]stablish a new congressional districting plan that complies with the North Carolina Constitution” remains very much live. Plaintiffs’ request for a declaration that the 2016 Plan is unconstitutional also remains live, and once this Court enters that declaration, this Court has the inherent authority to ensure that the constitutional violations it has found are cured.

Two recent redistricting cases in North Carolina are directly on point. First, in *Dickson v. Rucho*, this Court entered a declaratory judgment for the state-court plaintiffs after federal courts struck down the 2011 state legislative plans and remedial plans were adopted. *See* Order and Judgment on Remand from N.C. Supreme Court, *Dickson v. Rucho*, No. 11 CV 16896 (N.C. Super. Feb. 11, 2018). This Court rejected Legislative Defendants’ argument that the request for declaratory relief was moot because the 2011 plans had been repealed and replaced by new plans. This Court “conclude[d] that the Plaintiffs [were] entitled to declaratory judgment in their favor” on both their federal and state constitutional claims. *Id.* at 5.

If declaratory relief was warranted in *Dickson*, it is necessarily warranted here as well. In *Dickson*, the General Assembly had repealed the challenged 2011 plans as a result of separate federal litigation, in which the federal courts had already declared the 2011 plans unconstitutional and were ensuring that the remedial plans cured the racial gerrymandering violations found there. Here, the General Assembly replaced the 2016 congressional plan as a result of *this* litigation, and no other court will declare the 2016 Plan unconstitutional or ensure that the Remedial Plan cures the 2016 Plan’s constitutional infirmities. Plaintiffs’ interests in a declaratory judgment thus are even more compelling than in *Dickson*. Plaintiffs maintain a right to have the 2016 Plan declared unconstitutional by a court, and this Court’s entry of a declaratory

judgment will remove any conceivable doubt that this Court has jurisdiction to review whether the Remedial Plan cures the constitutional violations. “Once a right and a violation have been shown, the scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.” *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 15 (1971); *see also North Carolina v. Covington*, 137 S. Ct. 1624, 1625 (2017) (“Relief in redistricting cases is fashioned in the light of well-known principles of equity.”) (internal quotation marks omitted).

In any event, this Court can and must review the Remedial Plan regardless of whether the Court enters a declaratory judgment regarding the 2016 Plan. The U.S. Supreme Court’s 2018 decision in *Covington* makes that clear. In *Covington*, after the General Assembly enacted remedial state legislative plans, the plaintiffs submitted objections to the district court. The court sustained some of the objections and had a special master redraw the relevant districts. On appeal, Legislative Defendants argued—exactly as they will argue here—that the “plaintiffs’ lawsuit challenged only the 2011 Plan, and those claims became moot when the legislature repealed the law creating the 2011 Plan and replaced it with the 2017 Plan.” *North Carolina v. Covington*, Jurisdictional Statement, No. 17-1364, 2018 WL 1532754, at *19 (U.S. Mar. 26, 2018). Legislative Defendants contended that the “plaintiffs had two options: They could either amend their complaint to add challenges to the 2017 law or file a new lawsuit challenging it.” *Id.* Legislative Defendants insisted that the plaintiffs had no right to “pursue[] their challenges to the 2017 Plan only through ‘objections’ pressed in a so-called remedial proceeding.” *Id.*

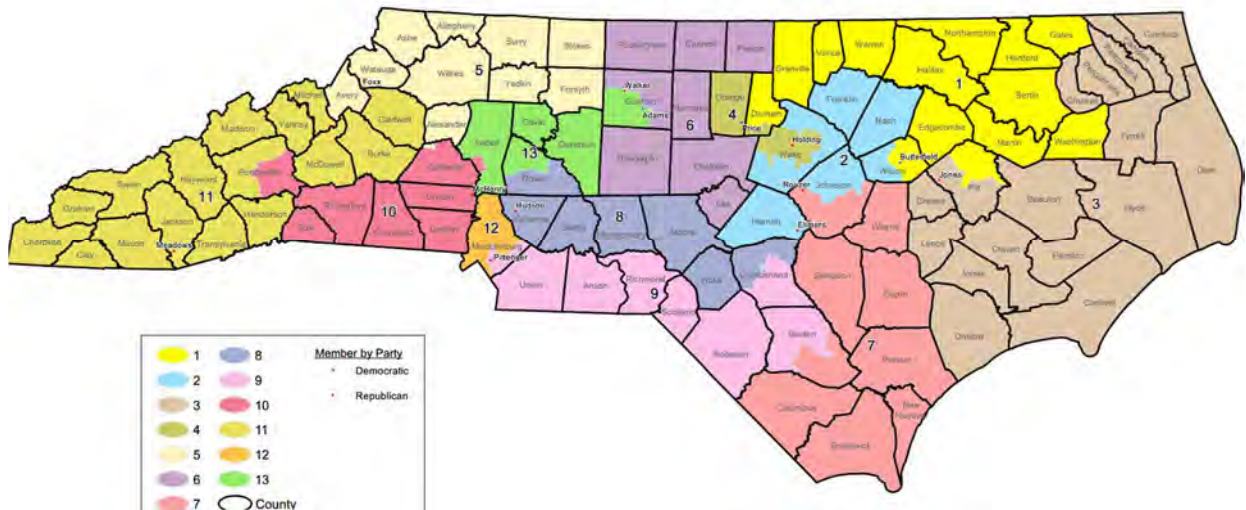
In an 8-1 decision, the U.S. Supreme Court rejected these arguments. The Supreme Court held that Legislative Defendants “misunderstand the nature of the plaintiffs’ claims.” *North Carolina v. Covington*, 138 S. Ct. 2548, 2552 (2018). As the Court explained, the

Covington plaintiffs’ claims “[arose] from the plaintiffs’ allegations that they ha[d] been separated into different districts on the basis of race,” and “it is the segregation of the plaintiffs—not the legislature’s line-drawing as such—that gives rise to [such] claims.” *Id.* at 2552-53 (alterations omitted). Consequently, “the plaintiffs’ claims that they were organized into legislative districts on the basis of their race *did not become moot simply because the General Assembly drew new district lines around them.*” *Id.* (emphasis added).

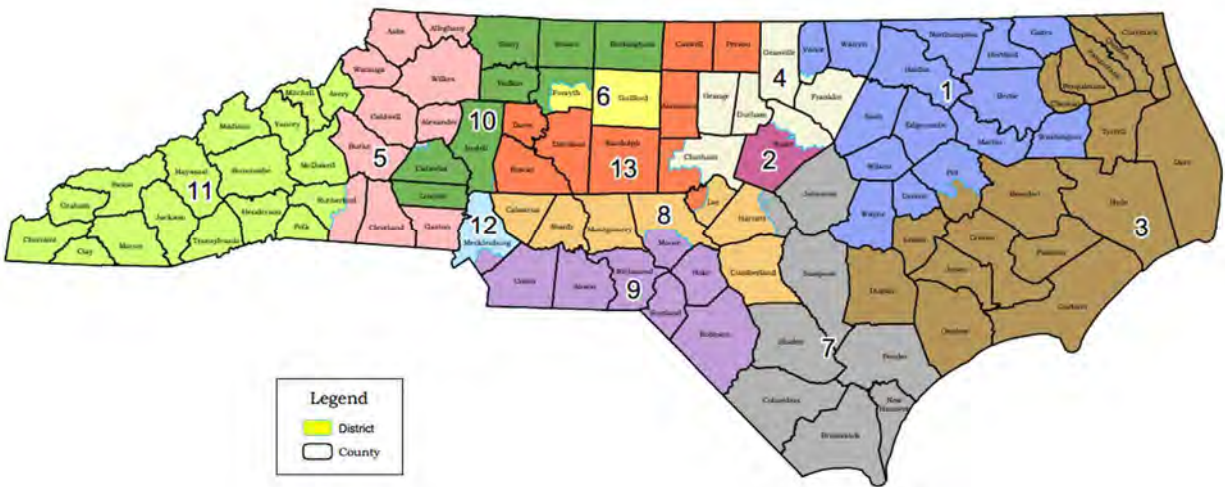
The same is true here with respect to Plaintiffs’ partisan gerrymandering claims. The claims in this case “arise from the plaintiffs’ allegations that they have been separated into different districts on the basis of [partisanship].” *Id.* at 2552-53 (alterations omitted). “[P]laintiffs’ claims that they were organized into legislative districts on the basis of their [partisanship] did not become moot simply because the General Assembly drew new district lines around them” in the Remedial Plan. *Id.* “Because the plaintiffs assert[] that they remain[] segregated on the basis of [partisanship], their claims remain[] the subject of a live dispute,” and this Court “properly retain[s] jurisdiction.” *Id.*

Indeed, like in *Covington*, Plaintiffs will contend that “some of the new districts [are] mere continuations of the old, gerrymandered districts.” *Id.* Even a cursory inspection of the Remedial Plan and the 2016 Plan shows that Districts 1, 3, 7, 8, 9, and 12 substantially overlap with the prior versions of those districts in the 2016 Plan:

2016 PLAN



REMEDIAL PLAN



This case would not be moot regardless, but it certainly cannot be moot where the Remedial Plan recreates much of the prior districts, including specific gerrymandered features of the 2016 Plan that Plaintiffs successfully challenged here.

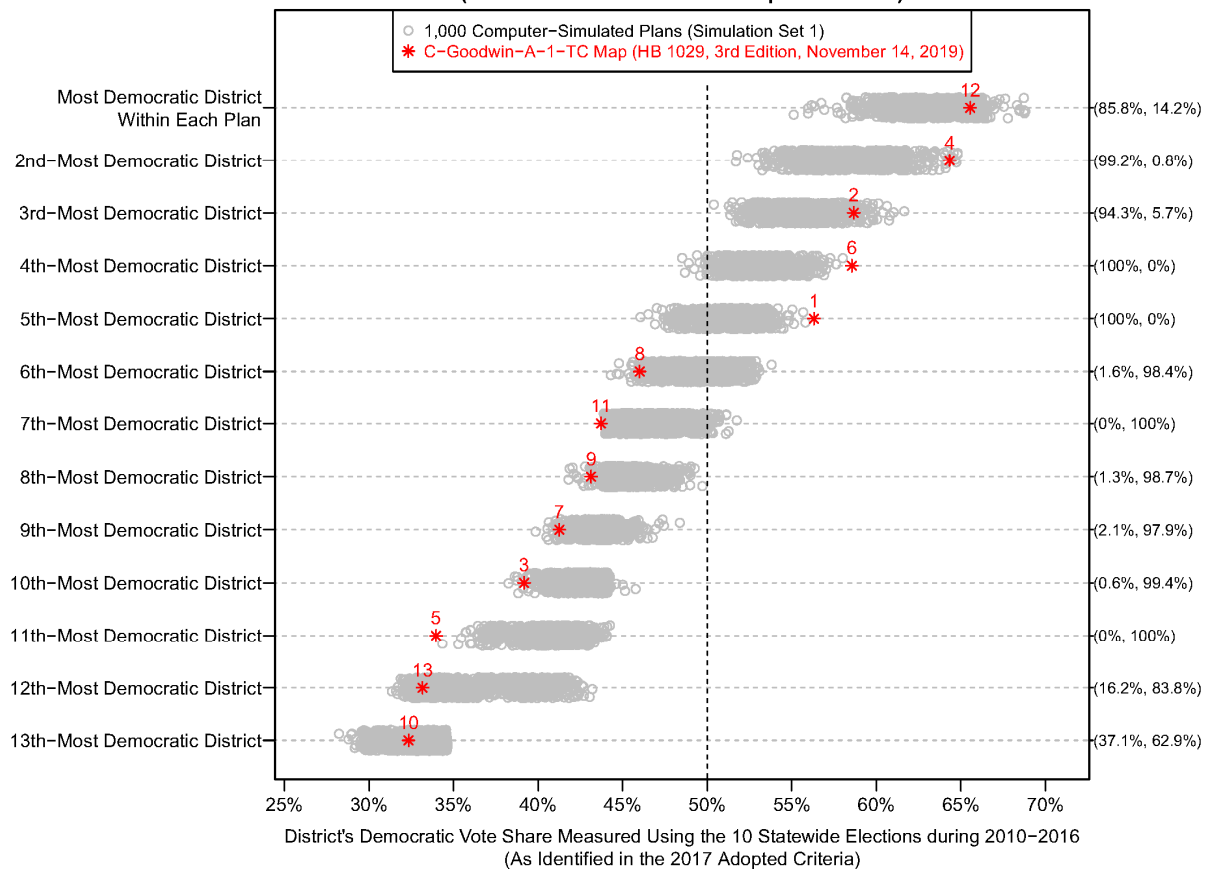
It makes no difference that Legislative Defendants enacted the Remedial Plan voluntarily, prior to final judgment. If anything, the voluntary nature of the Remedial Plan weighs against a finding of mootness. “[T]he standard . . . for determining whether a case has been mooted by the defendant’s voluntary conduct is stringent.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000). “[T]he party asserting mootness” maintains a “heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to start up again.” *Id.* Here, there is not merely a risk that the offending conduct will “start up again.” *Id.* Plaintiffs will show that it has already reoccurred with the unconstitutional partisan gerrymandering of the Remedial Plan. And because Legislative Defendants have repeated their unconstitutional actions, Plaintiffs have not obtained the relief sought in the Complaint.

Finding this case moot would allow the General Assembly “to avoid meaningful review” in this case and future redistricting cases. *Thomas v. N.C Dep’t of Human Res.*, 124 N.C. App. 698, 706, 478 S.E.2d 816, 821 (1996). It would mean that the General Assembly could pass any unlawful congressional plan, and then, when voters sue, replace it with another unlawful plan before the Court rules. This cycle could repeat over and over, in a game of legal whack-a-mole, until the next election is near and Legislative Defendants claim it is too late to change their most recent plan. The North Carolina Constitution does not permit citizens’ rights to be endlessly violated in such a manner. It guarantees that “every person for an injury done . . . shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.” N.C. Const. art. I, § 18. This Court’s review of the Remedial Plan is necessary to abide by that guarantee here for Plaintiffs and millions of North Carolina voters.

The Court’s review of the Remedial Plan is especially urgent given both the upcoming election schedule and the extremeness of the partisan gerrymander under the Remedial Plan.

Plaintiffs will establish that the Remedial Plan could not have been the product of anything other than partisan intent. For instance, the chart below (which is the same as that presented in the introduction) compares each district under the Remedial Plan to its corresponding district in Dr. Chen’s Simulation Set 1 plans, using the 2010-2016 statewide elections as a measure of partisanship. The chart reveals that at least 10 of 13 districts are extreme partisan outliers—they are more extreme in partisanship than their corresponding district in over 94% of the simulations. And remarkably, 9 of 13 districts are outliers above the 97.9% level. The Remedial Plan packs Democratic voters into five districts that are overwhelmingly Democratic, in order to ensure that the remaining eight districts are neither competitive nor Democratic-leaning.

**Figure 3: Simulation Set 1:
Districts’ Democratic Vote Share Measured Using the 10 Statewide Elections during 2010–2016
(As Identified in the 2017 Adopted Criteria)**



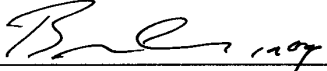
Plaintiffs will establish that the Remedial Plan was intentionally designed to predetermine an 8-5 Republican advantage in North Carolina’s congressional delegation, in violation of the North Carolina Constitution.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an order setting the requested briefing schedule on objections to the Remedial Plan, appointing Dr. Persily as Referee to assist the Court in its review of the Remedial Plan, and setting argument on these issues for December 2, 2019 at the existing hearing on summary judgment.

Respectfully submitted this the 15th day of November, 2019

PATTERSON HARKAVY LLP


Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Plaintiffs

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

R. Stanton Jones
Elisabeth S. Theodore
Daniel F. Jacobson
William C. Perdue
Sara Murphy D’Amico
Graham W. White
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
stanton.jones@arnoldporter.com

PERKINS COIE LLP

Marc E. Elias
Aria C. Branch
700 13th Street NW
Washington, DC 20005-3960
(202) 654-6200
melias@perkinscoie.com

Abha Khanna
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
(206) 359-8000
akhanna@perkinscoie.com
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to the following persons at the following addresses which are the last addresses known to me:

Amar Majmundar
Stephanie A. Brennan
Paul M. Cox
NC Department of Justice
P.O. Box 629
114 W. Edenton St.
Raleigh, NC 27602
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
pcox@ncdoj.gov

*Counsel for the State Board of Elections and
its members*

Phillip J. Strach
Michael McKnight
Alyssa Riggins
Ogletree, Deakins, Nash, Smoak & Stewart,
P.C.
4208 Six Forks Road, Suite 1100
Raleigh, NC 27609
Phillip.strach@ogletree.com
Michael.mcknight@ogletree.com
Alyssa.riggins@ogletree.com

Counsel for the Legislative Defendants

John E. Branch III
Nathaniel J. Pencook
Andrew Brown
Shanahan Law Group, PLLC
128 E. Hargett Street, Suite 300
Raleigh, NC 27601
jbranch@shanahanlawgroup.com
npencook@shanahanlawgroup.com
abrown@shanahanlawgroup.com
Counsel for the Defendant-Intervenors

E. Mark Braden
Richard B. Raile
Trevor M. Stanley
Baker & Hostetler, LLP
Washington Square, Suite 1100
1050 Connecticut Ave., N.W.
Washington, DC 20036-5403
rraile@bakerlaw.com
mbraden@bakerlaw.com
tstanley@bakerlaw.com
Counsel for the Legislative Defendants

This the 15th day of November, 2019.



Burton Craige, NC Bar No. 9180

Exhibit 7

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 012667

REBECCA HARPER, *et al.*
Plaintiffs,

v.

Representative DAVID R. LEWIS,
in his official capacity as Senior
Chairman of the House Standing
Committee on Redistricting, *et al.*,
Defendants.

ORDER

On November 20, 2019, this Court, on its own motion, enjoined the filing period for the 2020 congressional primary elections in North Carolina until further order of the Court.

The Court, in its discretion and pursuant to its inherent authority, hereby ORDERS that the injunction entered by the Court on November 20, 2019, delaying the filing period for Congressional candidates until further order of this Court is set aside, and it is FURTHER ORDERED that the North Carolina State Board of Elections may immediately accept for filing any notices of candidacy from candidates seeking party primary nominations for the House of Representatives of the United States for congressional districts as defined by the newly-enacted Session Law 2019-249.

SO ORDERED, this the 2nd day of December, 2019.

/s/ Paul C. Ridgeway

Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite

Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton

Alma L. Hinton, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the parties by emailing a copy thereof to the address below, in accordance with the October 10, 2019 Case Management Order:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs

R. Stanton Jones*
Elisabeth S. Theodore*
Daniel F. Jacobson*
William Perdue*
Sara Murphy D'Amico*
Graham White*
ARNOLD & PORTER KAYE SCHOLER LLP
Stanton.jones@arnoldporter.com
Elisabeth.theodore@arnoldporter.com
Daniel.jacobson@arnoldporter.com
William.Perdue@arnoldporter.com
Sara.DAmico@arnoldporter.com
Graham.White@arnoldporter.com
Counsel for Plaintiffs

Marc E. Elias*
Aria C. Branch*
Abha Khanna*
PERKINS COIE LLP
melias@perkinscoie.com
abbranch@perkinscoie.com
akhanna@perkinscoie.com
Counsel for Plaintiffs

Amar Majmundar
Stephanie A. Brennan
Paul M. Cox
NORTH CAROLINA DEPARTMENT OF JUSTICE
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
pcox@ncdoj.gov
Counsel for the State Board of Elections and members of the State Board of Elections

*Admitted Pro Hac Vice

Phillip J. Strach
Thomas A. Farr
Michael McKnight
Alyssa Riggins
OGLETREE DEAKINS NASH SMOAK & STEWART PC
Phil.strach@ogletree.com
Thomas.farr@ogletree.com
Michael.mcknight@ogletree.com
Alyssa.riggins@ogletree.com
Counsel for Legislative Defendants

Katherine L. McKnight*
E. Mark Braden*
Trevor M. Stanley*
Patrick T. Lewis*
Richard B. Raile*
BAKER & HOSTETLER LLP
kmcknight@bakerlaw.com
mbraden@bakerlaw.com
tstanley@bakerlaw.com
plewis@bakerlaw.com
rraile@bakerlaw.com
Counsel for Legislative Defendants

Kieran J. Shanahan
John E. Branch, III
Nathaniel J. Pencook
Andrew D. Brown
SHANAHAN LAW GROUP PLLC
kieran@shanahanlawgroup.com
jbranch@shanahanlawgroup.com
npencook@shanahanlawgroup.com
abrown@shanahanlawgroup.com
Counsel for Intervenor-Defendants

Jason Torchinsky*
Peter C. Winkelman*
HOLTZMAN VOGEL JOSEFIK TORCHINSKY PLLC
jtorchinsky@hvjt.law
cwinkelman@hvjt.law
Counsel for Intervenor-Defendants

This the 2nd day of December 2019.



Kellie Z. Myers
Trial Court Administrator
10th Judicial District
kellie.z.myers@nccourts.org

**Admitted Pro Hac Vice*

Exhibit 8

Joint Meeting of Committees

August 12, 2021

House Committee on Redistricting
Senate Committee on Redistricting and Elections

Criteria Adopted by the Committees

- **Equal Population.** The Committees will use the 2020 federal decennial census data as the sole basis of population for the establishment of districts in the 2021 Congressional, House, and Senate plans. The number of persons in each legislative district shall be within plus or minus 5% of the ideal district population, as determined under the most recent federal decennial census. The number of persons in each congressional district shall be as nearly as equal as practicable, as determined under the most recent federal decennial census.
- **Contiguity.** No point contiguity shall be permitted in any 2021 Congressional, House, and Senate plan. Congressional, House, and Senate districts shall be comprised of contiguous territory. Contiguity by water is sufficient.
- **Counties, Groupings, and Traversals.** The Committees shall draw legislative districts within county groupings as required by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002) (*Stephenson I*), *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (*Stephenson II*), *Dickson v. Rucho*, 367 N.C. 542, 766 S.E.2d 238 (2014) (*Dickson I*) and *Dickson v. Rucho*, 368 N.C. 481, 781 S.E. 2d 460 (2015) (*Dickson II*). Within county groupings, county lines shall not be traversed except as authorized by *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*.

Division of counties in the 2021 Congressional plan shall only be made for reasons of equalizing population and consideration of double bunking. If a county is of sufficient population size to contain an entire congressional district within the county's boundaries, the Committees shall construct a district entirely within that county.

- **Racial Data.** Data identifying the race of individuals or voters *shall not* be used in the construction or consideration of districts in the 2021 Congressional, House, and Senate plans. The Committees will draw districts that comply with the Voting Rights Act.
- **VTDs.** Voting districts ("VTDs") should be split only when necessary.
- **Compactness.** The Committees shall make reasonable efforts to draw legislative districts in the 2021 Congressional, House and Senate plans that are compact. In doing so, the Committee may use as a guide the minimum Reock ("dispersion") and Polsby-Popper ("perimeter") scores identified by Richard H. Pildes and Richard G. Neimi in *Expressive Harms, "Bizarre Districts," and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno*, 92 Mich. L. Rev. 483 (1993).
- **Municipal Boundaries.** The Committees may consider municipal boundaries when drawing districts in the 2021 Congressional, House, and Senate plans.

Joint Meeting of Committees

August 12, 2021

House Committee on Redistricting

Senate Committee on Redistricting and Elections

- **Election Data.** Partisan considerations and election results data *shall not* be used in the drawing of districts in the 2021 Congressional, House, and Senate plans.
- **Member Residence.** Member residence may be considered in the formation of legislative and congressional districts.
- **Community Consideration.** So long as a plan complies with the foregoing criteria, local knowledge of the character of communities and connections between communities may be considered in the formation of legislative and congressional districts.

Exhibit 9

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2021 DEC -2 P 12: 14CVS 015426

WAKE CO., C.S.C.

BY

SAP

AFFIDAVIT OF SEAN P. TRENDE

Now comes affiant Sean P. Trende, having been first duly cautioned and sworn, deposes
and states as follows:

1. I am over the age of 18 and am competent to testify regarding the matters
discussed below.
2. I currently reside at 1146 Elderberry Loop, Delaware, OH 43015. My e-mail is
trende.3@buckeyemail.osu.edu.
3. I have been retained in this matter by the Legislative Defendants, and am being
compensated at \$400.00 per hour for my work in this case.
4. My *curriculum vitae* is attached to this report as Exhibit 1.

EXPERT CREDENTIALS

5. I am currently enrolled as a doctoral candidate in political science at The Ohio
State University. I have completed all of my coursework and have passed comprehensive
examinations in both methods and American Politics. My coursework for my Ph.D. and

M.A.S. included, among other things, classes on G.I.S. systems, spatial statistics, issues in contemporary redistricting, machine learning, non-parametric hypothesis tests and probability theory. I expect to receive my Ph.D. in May of 2021. My dissertation focuses on applications of spatial statistics to political questions.

6. I joined RealClearPolitics in January of 2009. I assumed a fulltime position with RealClearPolitics in March of 2010. My title is Senior Elections Analyst. RealClearPolitics is a company of around 40 employees, with offices in Washington D.C. It produces one of the most heavily trafficked political websites in the world, which serves as a one-stop shop for political analysis from all sides of the political spectrum and is recognized as a pioneer in the field of poll aggregation. It produces original content, including both data analysis and traditional reporting. It is routinely cited by the most influential voices in politics, including David Brooks of *The New York Times*, Brit Hume of *Fox News*, Michael Barone of *The Almanac of American Politics*, Paul Gigot of *The Wall Street Journal*, and Peter Beinart of *The Atlantic*.

7. My main responsibilities with RealClearPolitics consist of tracking, analyzing, and writing about elections. I collaborate in rating the competitiveness of Presidential, Senate, House, and gubernatorial races. As a part of carrying out these responsibilities, I have studied and written extensively about demographic trends in the country, exit poll data at the state and federal level, public opinion polling, and voter turnout and voting behavior.

8. In particular, understanding the way that districts are drawn and how geography and demographics interact is crucial to predicting United States House of Representatives races, so much of my time is dedicated to that task.

9. I am currently a Visiting Scholar at the American Enterprise Institute, where my publications focus on the demographic and coalitional aspects of American Politics. My first paper focused on the efficiency gap, a metric for measuring the fairness of redistricting plans.

10. I am the author of *The Lost Majority: Why the Future of Government is up For Grabs and Who Will Take It*. In this book, I explore realignment theory. It argues that realignments are a poor concept that should be abandoned. As part of this analysis, I conducted a thorough analysis of demographic and political trends beginning in the 1920s and continuing through the modern times, noting the fluidity and fragility of the coalitions built by the major political parties and their candidates.

11. I co-authored the 2014 *Almanac of American Politics*. The Almanac is considered the foundational text for understanding congressional districts and the representatives of those districts, as well as the dynamics in play behind the elections. PBS's Judy Woodruff described the book as "the oxygen of the political world," while NBC's Chuck Todd noted that "[r]eal political junkies get two *Almanacs*: one for the home and one for the office." My focus was researching the history of and writing descriptions for many of the newly-drawn districts, including tracing the history of how and why they were drawn the way that they were drawn.

12. I have spoken on these subjects before audiences from across the political spectrum, including at the Heritage Foundation, the American Enterprise Institute, the CATO Institute, the Bipartisan Policy Center, and the Brookings Institution. In 2012, I was invited to Brussels to speak about American elections to the European External Action Service, which is the European Union's diplomatic corps. I was selected by the United States Embassy in Sweden to discuss the 2016 elections to a series of audiences there, and was selected by the United

States Embassy in Spain to fulfil a similar mission in 2018. I was invited to present by the United States Embassy in Italy, but was unable to do so because of my teaching schedule.

13. In the winter of 2018, I taught American Politics and the Mass Media at Ohio Wesleyan University. I taught Introduction to American Politics at The Ohio State University for three semesters from Fall of 2018 to Fall of 2019. In the Springs of 2020 and 2021, I taught Political Participation and Voting Behavior at The Ohio State University. This course spent several weeks covering all facets of redistricting: How maps are drawn, debates over what constitutes a fair map, measures of redistricting quality, and similar topics.

14. It is my policy to appear on any major news outlet that invites me, barring scheduling conflicts. I have appeared on both Fox News and MSNBC to discuss electoral and demographic trends. I have been cited in major news publications, including *The New York Times*, *The Washington Post*, *The Los Angeles Times*, *The Wall Street Journal*, and *USA Today*.

15. I sit on the advisory panel for the “States of Change: Demographics and Democracy” project. This project is sponsored by the Hewlett Foundation and involves three premier think tanks: The Brookings Institution, the Bipartisan Policy Center, and the Center for American Progress. The group takes a detailed look at trends among eligible voters and the overall population, both nationally and in key states, to explain the impact of these changes on American politics, and to create population projections, which the Census Bureau abandoned in 1995. In 2018, I authored one of the lead papers for the project: “In the Long Run, We’re All Wrong,” available at <https://bipartisanpolicy.org/wp-content/uploads/2018/04/BPC-Democracy-States-of-Change-Demographics-April-2018.pdf>.

16. I previously authored an expert report in *Dickson v. Rucho*, No. 11-CVS-16896 (N.C. Super Ct., Wake County), which involved North Carolina’s 2012 General Assembly and

Senate maps. Although I was not called to testify, it is my understanding that my expert report was accepted without objection. I also authored an expert report in *Covington v. North Carolina*, Case No. 1:15-CV-00399 (M.D.N.C.), which involved almost identical challenges in a different forum. Due to what I understand to be a procedural quirk, where my largely identical report from *Dickson* had been inadvertently accepted by the plaintiffs into the record when they incorporated parts of the *Dickson* record into the case, I was not called to testify.

17. I authored two expert reports in *NAACP v. McCrory*, No. 1:13CV658 (M.D.N.C.), which involved challenges to multiple changes to North Carolina’s voter laws, including the elimination of a law allowing for the counting of ballots cast in the wrong precinct. I was admitted as an expert witness and testified at trial. My testimony discussed the “effect” prong of the Voting Rights Act claim. I did not examine the issues relating to intent.

18. I authored reports in *NAACP v. Husted*, No. 2:14-cv-404 (S.D. Ohio), and *Ohio Democratic Party v. Husted*, Case 15-cv-01802 (S.D. Ohio), which dealt with challenges to various Ohio voting laws. I was admitted and testified at trial in the latter case (the former case settled). The judge in the latter case ultimately refused to consider one opinion, where I used an internet map-drawing tool to show precinct locations in the state. Though no challenge to the accuracy of the data was raised, the judge believed I should have done more work to check that the data behind the application was accurate.

19. I served as a consulting expert in *Lee v. Virginia Board of Elections*, No. 3:15-cv-357 (E.D. Va. 2016), a voter identification case. Although I would not normally disclose consulting expert work, I was asked by defense counsel to sit in the courtroom during the case and review testimony. I would therefore consider my work *de facto* disclosed.

20. I filed an expert report in *Mecinas v. Hobbs*, No. CV-19-05547-PHX-DJH (D. Ariz. 2020). That case involved a challenge to Arizona’s ballot order statute. Although the judge ultimately did not rule on a motion in limine in rendering her decision, I was allowed to testify at the hearing.

21. I authored two expert reports in *Feldman v. Arizona*, No. CV-16-1065-PHX-DLR (D. Ariz.). Plaintiffs in that case challenged an Arizona law prohibiting the collection of voted ballots by third parties that were not family members or caregivers and the practice of most of the state’s counties to require voters to vote in their assigned precinct. My reports and testimony were admitted. Part of my trial testimony was struck in that case for reasons unrelated to the merits of the opinion; counsel for the state elicited it while I was on the witness stand and it was struck after Plaintiffs were not able to provide a rebuttal to the new evidence.

22. I authored an expert report in *Smith v. Perrera*, No. 55 of 2019 (Belize). In that case I was appointed as the court’s expert by the Supreme Court of Belize. In that case I was asked to identify international standards of democracy as they relate to malapportionment claims, to determine whether Belize’s electoral divisions (similar to our congressional districts) conformed with those standards, and to draw alternative maps that would remedy any existing malapportionment.

23. I authored expert reports in *A. Philip Randolph Institute v. Smith*, No. 1:18-cv-00357-TSB (S.D. Ohio), *Whitford v. Nichol*, No. 15-cv-421-bbc (W.D. Wisc.), and *Common Cause v. Rucho*, NO. 1:16-CV-1026-WO-JEP (M.D.N.C.), which were efficiency gap-based redistricting cases filed in Ohio, Wisconsin and North Carolina.

24. I also authored an expert report in the cases of *Ohio Organizing Collaborative, et al v. Ohio Redistricting Commission, et al* (No. 2021-1210); *League of Women Voters of Ohio, et al v. Ohio Redistricting Commission, et al* (No. 2021-1192); *Bria Bennett, et al v. Ohio Redistricting Commission, et al* (No. 2021-1198). These cases are pending in original action before the Supreme Court of Ohio.

25. I currently serve as one of two special masters appointed by the Supreme Court of Virginia to redraw the districts that will elect the commonwealth’s representatives to the House of Delegates, state Senate, and U.S. Congress.

SUMMARY OF WORK PERFORMED

26. I certify that the images attached as Exhibit 2 are true and correct copies of images that I created and that I describe below.

27. To create these images, I first downloaded county-level shapefiles from the United States Census Bureau. Using R, a widely utilized statistical programming tool, I joined county-level vote totals for U.S. presidential races in 2012, 2016 and 2020.

28. Attached as Exhibit 2-A are maps I generated with counties colored red if the Republican candidate won that county, and blue if the Democratic candidate won that county.

29. I then centered these results on national popular vote results for the respective years, an accepted mechanism that is used to enable analysts to compare results that occur in differing electoral environments. *See, e.g.*, Bernard Fraga, “Candidates or Districts? Reevaluating the Role of Race in Voter Turnout,” 60 *Am. Jnl. Pol. Sci.* 97, 115 (2016). Because the national popular vote reflected reasonably close Democratic wins in all four years, the effect of doing this computation is marginal.

30. Attached as Exhibit 2-B are maps I generated with counties colored red if the Republican candidate performed better in the county than they did nationally, and blue if the Republican candidate performed worse in the county than they did nationally. If the Republican candidate performed better in the county than they did nationally, I refer to that performance as “leaning” Republican.

31. As shown in Table 1 below, in 2012, the Republican presidential candidate won 70 of North Carolina’s 100 counties. In 2016, the Republican presidential candidate won 76 counties, and in 2020, the Republican presidential candidate won 75 counties.

32. As shown in Table 1 below, in 2012, the number of counties in North Carolina that leaned¹ Republican in the Presidential Election was 73 out of 100, in 2016 that figure was 77 out of 100, and in 2020 that figure was 80 out of 100.

TABLE 1

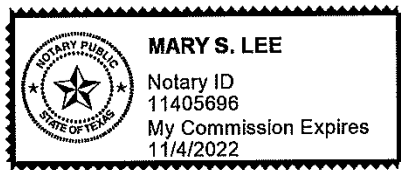
Election Year	# of N.C. Counties that voted Republican	# of N.C. Counties that leaned Republican
2012	70/100	73/100
2016	76/100	77/100
2020	75/100	80/100

¹ “Leaned” is as defined in ¶ 30.

Executed on December 1, 2021

DocuSigned by:
Sean P. Trende
D329B1A55F6D4B4...
Sean P. Trende

Sworn or affirmed before me and subscribed in the presence the 1st day of December, 2021, in
the state of Texas and County of Harris



DocuSigned by:
Mary S. Lee
2FAD7787555D439...
Notary Public

Exhibit 1

SEAN P. TRENDE
1146 Elderberry Loop
Delaware, OH 43015
strende@realclearpolitics.com

EDUCATION

Ph.D., The Ohio State University, Political Science, expected 2022.

M.A.S. (Master of Applied Statistics), The Ohio State University, 2019.

J.D., Duke University School of Law, *cum laude*, 2001; Duke Law Journal, Research Editor.

M.A., Duke University, *cum laude*, Political Science, 2001. Thesis titled *The Making of an Ideological Court: Application of Non-parametric Scaling Techniques to Explain Supreme Court Voting Patterns from 1900-1941*, June 2001.

B.A., Yale University, with distinction, History and Political Science, 1995.

PROFESSIONAL EXPERIENCE

Law Clerk, Hon. Deanell R. Tacha, U.S. Court of Appeals for the Tenth Circuit, 2001-02.

Associate, Kirkland & Ellis, LLP, Washington, DC, 2002-05.

Associate, Hunton & Williams, LLP, Richmond, Virginia, 2005-09.

Associate, David, Kamp & Frank, P.C., Newport News, Virginia, 2009-10.

Senior Elections Analyst, RealClearPolitics, 2009-present.

Columnist, Center for Politics Crystal Ball, 2014-17.

Gerald R. Ford Visiting Scholar, American Enterprise Institute, 2018-present.

BOOKS

Larry J. Sabato, ed., *The Blue Wave*, Ch. 14 (2019).

Larry J. Sabato, ed., *Trumped: The 2016 Election that Broke all the Rules* (2017).

Larry J. Sabato, ed., *The Surge: 2014's Big GOP Win and What It Means for the Next Presidential Election*, Ch. 12 (2015).

Larry J. Sabato, ed., *Barack Obama and the New America*, Ch. 12 (2013).

Barone, Kraushaar, McCutcheon & Trende, *The Almanac of American Politics 2014* (2013).

The Lost Majority: Why the Future of Government is up for Grabs – And Who Will Take It (2012).

PREVIOUS EXPERT TESTIMONY

Dickson v. Rucho, No. 11-CVS-16896 (N.C. Super. Ct., Wake County) (racial gerrymandering).

Covington v. North Carolina, No. 1:15-CV-00399 (M.D.N.C.) (racial gerrymandering).

NAACP v. McCrory, No. 1:13CV658 (M.D.N.C.) (early voting).

NAACP v. Husted, No. 2:14-cv-404 (S.D. Ohio) (early voting).

Ohio Democratic Party v. Husted, Case 15-cv-01802 (S.D. Ohio) (early voting).

Lee v. Virginia Bd. of Elections, No. 3:15-cv-357 (E.D. Va.) (early voting).

Feldman v. Arizona, No. CV-16-1065-PHX-DLR (D. Ariz.) (absentee voting).

A. Philip Randolph Institute v. Smith, No. 1:18-cv-00357-TSB (S.D. Ohio) (political gerrymandering).

Whitford v. Nichol, No. 15-cv-421-bbc (W.D. Wisc.) (political gerrymandering).

Common Cause v. Rucho, No. 1:16-CV-1026-WO-JEP (M.D.N.C.) (political gerrymandering).

Mecinas v. Hobbs, No. CV-19-05547-PHX-DJH (D. Ariz.) (ballot order effect).

Fair Fight Action v. Raffensperger, No. 1:18-cv-05391-SCJ (N.D. Ga.) (statistical analysis).

Pascua Yaqui Tribe v. Rodriguez, No. 4:20-CV-00432-TUC-JAS (D. Ariz.) (early voting).

COURT APPOINTMENTS

Appointed as Voting Rights Act expert by Arizona Independent Redistricting Commission

Appointed redistricting expert by the Supreme Court of Belize in *Smith v. Perrera*, No. 55 of 2019 (one-person-one-vote).

INTERNATIONAL PRESENTATIONS AND EXPERIENCE

Panel Discussion, European External Action Service, Brussels, Belgium, *Likely Outcomes of 2012 American Elections*.

Selected by U.S. Embassies in Sweden, Spain, and Italy to discuss 2016 and 2018 elections to think tanks and universities in area (declined Italy due to teaching responsibilities).

Selected by EEAS to discuss 2018 elections in private session with European Ambassadors.

TEACHING

American Democracy and Mass Media, Ohio Wesleyan University, Spring 2018.

Introduction to American Politics, The Ohio State University, Autumn 2018, 2019, 2020, Spring 2018.

Political Participation and Voting Behavior, Spring 2020, Spring 2021.

REAL CLEAR POLITICS COLUMNS

Full archives available at http://www.realclearpolitics.com/authors/sean_trende/

Exhibit 2

Exhibit 2-A

Republican Wins and Losses, County-Level Two-Party Presidential Vote in NC, 2012



Republican Wins and Losses, County-Level Two-Party Presidential Vote in NC, 2016



Republican Wins and Losses, County-Level Two-Party Presidential Vote in NC, 2020

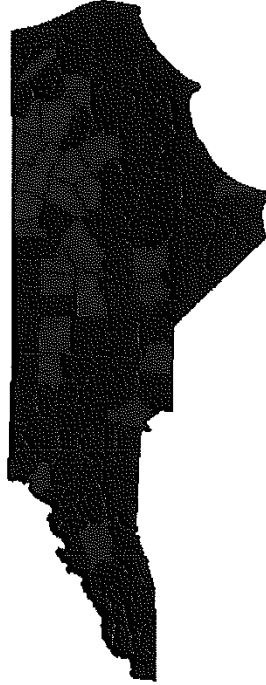
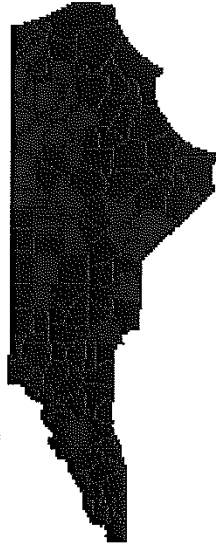
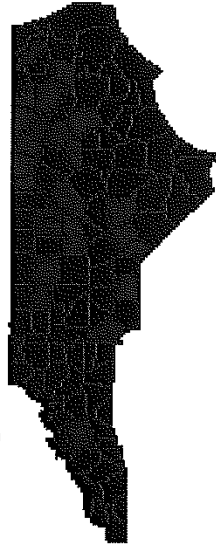


Exhibit 2-B

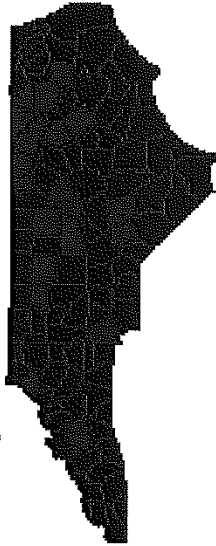
Republican Share of the Centered County-Level
Two-Party Presidential Vote in NC, 2012



Republican Share of the Centered County-Level
Two-Party Presidential Vote in NC, 2016



Republican Share of the Centered County-Level
Two-Party Presidential Vote in NC, 2020



STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 15426

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, INC. et al.,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House Standing
Committee on Redistricting, et al.

Defendants.

**STATE BOARD DEFENDANTS'
RESPONSE TO PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

NOW COME Defendants the North Carolina State Board of Elections and its members (collectively, the “State Board” or “State Board Defendants”), by and through the undersigned counsel, to hereby submit this response to Plaintiffs’ motion for preliminary injunction.

INTRODUCTION

State Board Defendants take no position on the merits of Plaintiffs’ claims.

Rather, this response is provided to inform the Court and the parties of the State Board’s administrative considerations and concerns. Should the Court reach consideration of granting the requested relief, the State Board Defendants note that while such relief would impose a significant burden on the State Board’s and county boards’ administration of the upcoming elections, moving the election schedule as requested to allow time for redistricting issues to be decided would not be insurmountable or impossible if the considerations outlined below by the State Board regarding relevant limitations and deadlines are taken into account.

FACTUAL BACKGROUND

A. Current Election Schedule

On March 8, 2022, North Carolina is scheduled to hold its 2022 statewide primary election. *See* Affidavit of Karen Brinson Bell, ¶ 3. Contests on the ballot include the U.S. Senate and House of Representatives, the N.C. General Assembly, state judicial contests at all levels, district attorneys, county offices, and some municipal offices. *Id.* For the non-municipal contests, if no candidate reaches the vote share necessary to become the party nominee after the first primary (at least 30% of the vote plus one), a second primary may be held on April 26, or May 17 if a federal office is involved. *See* N.C.G.S. § 163-111. For some municipal contests, a second election will occur on the date of the second primary. Bell Aff., ¶3.

B. State Board Implementation Considerations

In our state, the county boards of elections administer elections in each county, including, among other things, providing for the distribution of voting systems, ballots, and pollbooks, training elections officials, conducting absentee and in-person voting, and tabulation and canvassing of results. *Id.*, ¶4. The State Board is responsible for development and enhancement of our Statewide Elections Information Management System (“SEIMS”), which includes managing functions that assign voters to their relevant voting districts, a process known as “geocoding.” *Id.*

The geocoding process starts as soon as the State Board receives legislative district shapefiles, which include geographic data setting the boundaries for legislative districts. *Id.*, ¶ 5. The State Board’s staff then works with county board staff to use the shapefiles to update the voting jurisdictions that are assigned to particular addresses in SEIMS. *Id.* The State Board estimates that geocoding would likely take at least 21 days (including holidays and weekends)

for the districts at issue in the 2022 primary. *Id.*, ¶ 6.

Ballot preparation and proofing can begin only after geocoding is complete and candidate filing closes. *Id.*, ¶ 7. For the 2022 primary elections, candidate filing occurs between noon on December 6, 2021, and noon on December 17, 2021. *See* N.C.G.S. § 163-106.2(a). Generating and proofing ballots is complex and involves multiple technical systems and quality-control checkpoints that precede ballot printing and the coding of voting machines. *Id.* This includes proofing each ballot style for content and accuracy, ballot printing, and delivery of all ballot materials to county boards. *Id.* Based on prior experience, the State Board estimates that ballot preparation and proofing would likely take between 17 and 21 days (including holidays and weekends) for the 2022 primary, depending on the number of ballot styles to prepare, which largely depends on the degree of change to intra-county district lines, and the number of contested nominations. *Id.*

While not ideal, geocoding and candidate filing may occur concurrently. *Id.*, ¶ 8. However, geocoding and ballot preparation must occur consecutively. *Id.*, ¶ 9. Ballots cannot be prepared until the proper geographical boundaries for voting districts are set in SEIMS and the candidates are known after the candidate-filing period closes. *Id.* Therefore, the total time required for geocoding and ballot preparation is likely between 38 and 42 days (including holidays and weekends). *Id.* This work must be completed before the beginning of the absentee by mail voting period.

The State Board is required by statute to begin mailing absentee ballots 50 days prior to the primary election day or 45 days under limited exceptions pursuant to N.C.G.S. § 163-227.10(a). *Id.*, ¶ 10. The federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires mailing 45 days before a primary election, *see* 52 U.S.C. § 20302(a)(8)(A),

unless Executive Director Bell requests a waiver of this requirement based on a legal contest delaying the preparation of ballots (or another enumerated hardship), and that waiver is granted by the federal official designated to administer UOCAVA, *see id.* § 20302(g). Bell Aff., ¶ 10. As a result, the current deadline by which county boards must be prepared to begin distributing absentee ballots is January 14, 2022, or January 21, 2022 if the period is shortened as provided above. *Id.* In order to maintain the current deadlines for the March 8, 2022 primary, the State Board’s assessment is that it must receive map shapefiles for geocoding and ballot preparation no later than December 3–7, 2021, or December 10–14, 2021, if the absentee mailing period is shortened. *Id.*, ¶ 11.

If the absentee mailing period were shortened, the State Board would then need to take into account the impact on preparations for in-person voting. Currently, in-person early voting is set to begin on February 17, 2022 for the 2022 primary. *Id.*, ¶ 12. Before in-person voting occurs, the State Board must work with county boards to prepare voting tabulation machines, and the county boards must conduct logic and accuracy testing of the equipment. *Id.*, ¶ 13. The State Board estimates that this would likely take the counties 14 days. *Id.* Then the State Board and county boards conduct a mock election day followed by two weeks to remedy any technical problems identified during the mock election. *Id.* Accordingly, regardless of when the absentee ballot distribution deadline falls, the State Board estimates it would require 29 days after ballots have been prepared in order for staff to prepare for in-person election voting. *Id.*, ¶ 14.

Finally, for reasons more thoroughly explained in the Affidavit of Executive Director Bell, the delay of any contest currently scheduled for the March 8, 2022 primary, would, as a practical matter, necessitate the delay of all contests scheduled for that date. *Id.*, ¶ 15-21. For instance, if only the contests subject to legislative redistricting were delayed, this would create a

different set of administrative requirements caused by blackout periods in which the geocoding process must be halted for 30 days while in-person voting is occurring and county boards canvass results in the other contests that do not involve redistricting. *Id.*, ¶¶ 16-17. In order to accommodate the second primary for the other contests allowed to proceed on March 8, 2022 (including certain municipal contests that are certain to occur), this would create a second blackout period further disrupting preparation for the delayed races. *Id.*, ¶ 17. This represents an interruption in geocoding of another 30 days, resulting in the work of geocoding and ballot preparation not being completed until approximately May 26-30, 2022, at the earliest. *Id.*

When the blackout periods are combined with the need to have absentee ballots prepared for distribution 50 days (or 45 if shortened) before the election date pursuant to N.C.G.S. § 163-227.10(a), the earliest that a separate primary could occur is 45 days later, which would result in a primary election day of Tuesday, July 12, 2022. *Id.*, ¶¶ 17-18.

The absentee distribution deadline is not the only consideration. One-stop early voting is required to begin 20 days before the primary election day under N.C.G.S. § 163-227.2(b). Accordingly, all of the administrative processes that must occur before in-person voting begins (geocoding, ballot preparation, burning media, preparing touch-screen ballots, logic and accuracy testing, mock election, and technical fix period, among other things), which are estimated by State Board staff to take between 67 and 71 days total, would need to occur between March 19, 2022, and 20 days before the date of the separate primary. Bell Aff., ¶19. A second primary in the unchallenged contests will cause this period to be extended by an additional 30 day delay caused by the second blackout period as described above. *Id.*, ¶¶ 16-17. Therefore, even putting aside absentee ballot distribution deadlines, and only accounting for the in-person voting timelines, the earliest that separate first primary for the challenged contests could occur is, again,

Tuesday, July 12, 2022. *Id.*, ¶ 19.

Such a late date for a first primary would make any second primary infeasible if triggered and requested under N.C.G.S. § 163-111. *Id.*, ¶ 20. If that occurs, a second primary under this scenario would occur on either August 30, 2022 or September 20, 2022 (*i.e.*, 7 or 10 weeks after the initial primary, depending on whether there was a federal contest involved) pursuant to N.C.G.S. § 163-111(e). *Id.* This would interfere with the August 19 to August 23 deadline to begin preparing ballots for the general election because absentee ballots must be mailed out for the general election on September 9, 2022 pursuant to N.C.G.S. § 163-227.10(a), and staff require 17-21 days to prepare those ballots. *Id.*

Separate primaries also incur more practical administrative challenges for counties, including added difficulty recruiting poll workers, securing voting locations, and associated costs. *Id.*, ¶ 21.

Thus, enjoining and delaying only the challenged primary contests would result in significantly greater administrative burden on the boards of election, could result in significant voter confusion, and could potentially lead to an administratively infeasible timeline in late summer. *Id.*, ¶ 22. In contrast, if all currently scheduled contests set for March 8, 2022 were moved to a later date, this would still raise significant administrative burdens, but it would be more feasible to implement. This is because geocoding of any new shapefiles can begin immediately upon receipt by the State Board, without blackout interruptions, and voters would not need to keep track of multiple primary dates for the 2022 elections. *Id.*

Under those circumstances, keeping in mind all of the estimates of time needed to prepare for the elections outlined above, and backtracking from the earliest relevant deadline for the general election—the ballot preparation deadline of August 19 to August 23—the State

Board staff’s assessment is that the second primary would need to occur no later than Tuesday, July 26, 2022, and the first primary by no later than Tuesday, May 17, 2022. That, in turn, would require that the State Board be provided with any new shapefiles no later than February 14 to 18, 2022. *Id.*, ¶ 23, and Fn 3-6.

LEGAL ARGUMENT

Legal Standard

In considering a motion for preliminary injunction, the Court must “engage in a balancing process, weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant[s] if injunctive relief is granted.” *Williams v. Greene*, 36 N.C. App. 80, 86, 243 S.E.2d 156, 160 (1978). “A preliminary injunction should not be granted if a serious question exists in respect of the defendant’s right to do what the plaintiffs seek to restrain and the granting thereof would work greater injury to the defendant than is reasonably necessary for the protection *Pendente lite* of the plaintiffs’ rights.” *Setzer v. Annas*, 286 N.C. 534, 540, 212 S.E.2d 154, 157–58 (1975).

I. Administrative Burdens, Considerations, and Important Deadlines.

Should this Court choose to grant the relief requested by Plaintiffs, and delay the March 8, 2022 to a date in May of 2022, it would impose significant burdens on the State Board, but it would be administratively feasible so long as certain considerations and deadlines are set.

The affidavit of State Board Executive Director Karen Brinson Bell, which has been filed contemporaneously with the service of this brief, provides a detailed discussion of the relevant administrative processes that the State Board and county boards carry out in preparation for an election. It identifies the amount of time required to accomplish each process that occurs after the State Board receives map shapefiles, and before absentee ballots are distributed and in-person

voting can begin. *See* Bell Aff. ¶¶ 4-14. Certain time estimates are provided as ranges due to certain contingencies, as explained in the affidavit. *Id.* The affidavit further explains the administrative difficulties that would be triggered if a separate primary were ordered for only the races challenged in this action and why that is likely not administratively feasible. *Id.*, ¶¶ 15–21.

Rather than restate the contents of Ms. Bell’s affidavit, which appear above in detail in the facts section of this response, State Defendants highlight the two primary issues most relevant to the Court’s consideration of Plaintiffs’ requested relief.

First, if the Court decides that any contests scheduled for the March 8, 2022 primary should be delayed, then all contests scheduled for that date should be delayed. Delaying a portion of the contests would result in significantly greater administrative burdens for the State Board, could create significant voter confusion, and could impact the deadlines required to carry out the general election in the fall of 2022. *Id.*, ¶ 22.

Second, if all races are delayed from the March 8, 2022 to latest date deemed practicable by the State Board, May 17, 2022, and new maps are ordered by this Court, then the new shapefiles must be received by the State Board no later than February 14-18, 2022 in order for them to be implemented ahead of that delayed primary. *Id.*, ¶ 23. It should be noted that the State Board’s assessment is that these are dates of last resort that provide the maximum amount of time to resolve any redistricting issues the Court determines to address, before the burden would likely become administratively infeasible for the State Board to conduct orderly elections in 2022.

CONCLUSION

State Board Defendants ask that the Court consider the administrative issues above. State Board staff are available to answer any further questions from the Court regarding administrative considerations relevant to the Court's determination of the motion.

Respectfully submitted this 2nd day of December, 2021.

N.C. DEPARTMENT OF JUSTICE



Terence Steed
Special Deputy Attorney General
State Bar No. 52809

Amar Majmundar
Senior Deputy Attorney General
State Bar No. 24668

Stephanie A. Brennan
Special Deputy Attorney General
State Bar No. 35955

North Carolina Dept. of Justice
Post Office Box 629
Raleigh, N.C. 27602
Emails: amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
tsteed@ncdoj.gov
Tel: (919) 716-6900
Fax: (919) 716-6763

Attorneys for State Board Defendants

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing document in the above titled action upon all parties to this cause by via email and addressed as follows:

ROBINSON, BRADSHAW & HINSON, P.A.

Stephen D. Feldman
434 Fayetteville St.
Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com

Adam K. Doerr
101 North Tryon St.
Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
1450 Raleigh Rd.
Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradhsaw.com

JENNER & BLOCK, LLP

David J. Bradford
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urga Mittal
1099 New York Ave., NW
Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

Counsel for Plaintiffs

NELSON MULLINS RILEY &
SCARBOROUGH LLP


Phillip J. Strach
Tom Farr
Alyssa Riggins
phil.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
Glenlake One, Suite 200
4140 Parklake Avenue
Raleigh, NC 27612

BAKER HOSTETLER

Mark Braden
Kate McNight
Richard Raile
MBraden@bakerlaw.com
kmcknight@bakerlaw.com
rraile@bakerlaw.com
1050 Connecticut Avenue, NW
Suite 1100
Washington, D.C. 20036

*Counsel for Defendants Philip E. Berger,
Timothy K. Moore, Ralph E. Hise, Jr., Warren
Daniel, Paul Newton, and Destin Hall*

This the 2nd day of December, 2021.



Terence Steed
Special Deputy Attorney General

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

21 CVS 15426

2021 DEC -2 PM 1:03
NORTH CAROLINA LEAGUE OF CONSERVATION VOTERS, INC. et al.,
WAKE CO. G.S.C.
BY [Signature]

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House Standing
Committee on Redistricting, et al.

Defendants.

NOTICE OF FILING:

**AFFIDAVIT OF
KAREN BRINSON BELL**

NOW COME Defendants the North Carolina State Board of Elections and its members (collectively, the “State Board Defendants”), by and through the undersigned counsel, to hereby submit the attached Affidavit of Karen Brinson Bell, previously filed in the matter of *North Carolina State Conference of the NAACP, et al. v. Berger, et al.*, 21 CVS 14476, and filed here in support of State Board Defendants’ Response to Plaintiffs’ Motion for Preliminary Injunction. A copy of that Memorandum is being delivered to the Court via email.

Respectfully submitted this 2nd day of December, 2021.

N.C. DEPARTMENT OF JUSTICE



Terence Steed
Special Deputy Attorney General
State Bar No. 52809

Amar Majmundar
Senior Deputy Attorney General
State Bar No. 24668

Stephanie A. Brennan
Special Deputy Attorney General
State Bar No. 35955

North Carolina Dept. of Justice
Post Office Box 629
Raleigh, N.C. 27602
Emails: amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
tsteed@ncdoj.gov
Tel: (919) 716-6900
Fax: (919) 716-6763

Attorneys for State Board Defendants

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing document in the above titled action upon all parties to this cause by via email and addressed as follows:

ROBINSON, BRADSHAW & HINSON, P.A.

Stephen D. Feldman
434 Fayetteville St.
Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com

Adam K. Doerr
101 North Tryon St.
Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
1450 Raleigh Rd.
Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradhsaw.com

JENNER & BLOCK, LLP

David J. Bradford
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urga Mittal
1099 New York Ave., NW
Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

Counsel for Plaintiffs

NELSON MULLINS RILEY &
SCARBOROUGH LLP

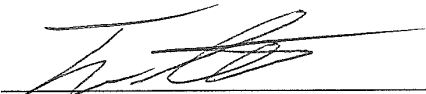
Phillip J. Strach
Tom Farr
Alyssa Riggins
phil.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
Glenlake One, Suite 200
4140 Parklake Avenue
Raleigh, NC 27612

BAKER HOSTETLER

Mark Braden
Kate McNight
Richard Raile
MBraden@bakerlaw.com
kmcknight@bakerlaw.com
rraile@bakerlaw.com
1050 Connecticut Avenue, NW
Suite 1100
Washington, D.C. 20036

*Counsel for Defendants Philip E. Berger,
Timothy K. Moore, Ralph E. Hise, Jr., Warren
Daniel, Paul Newton, and Destin Hall*

This the 2nd day of December, 2021.



Terence Steed
Special Deputy Attorney General

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 14476

NORTH CAROLINA STATE
CONFERENCE OF NAACP, et al.,

Plaintiffs,

Y.

PHILLIP E. BERGER, et al.,

Defendants.

**AFFIDAVIT OF
KAREN BRINSON BELL**

I, Karen Brinson Bell, swear under penalty of perjury, that the following information is true to the best of my knowledge and state as follows:

1. I am over 18 years old, I am competent to give this affidavit, and have personal knowledge of the facts set forth in this affidavit. I have consulted with senior staff at the State Board in the preparation of this affidavit.

2. I currently serve as the Executive Director of the North Carolina State Board of Elections (the "State Board"). I became Executive Director of the State Board effective June 1, 2019. My statutory duties as Executive Director include staffing, administration, and execution of the State Board's decisions and orders. I am also the Chief State Elections Official for the State of North Carolina under the National Voter Registration Act of 1993 and N.C.G.S. § 163-27. As Executive Director, I am responsible for the administration of elections in the State of North Carolina. The State Board has supervisory responsibilities for the 100 county boards of elections, and as Executive Director, I provide guidance to the directors of the county boards.

3. On March 8, 2022, North Carolina is scheduled to hold its 2022 statewide primary election. Contests on the ballot include the U.S. Senate and House of Representatives, the N.C.

General Assembly, state judicial contests at all levels, district attorneys, and county offices. Additionally, voters in roughly a third of North Carolina's counties will have municipal contests on their ballot, due to special legislation delaying certain municipal contests due to delays in receiving U.S. Census data. *See* N.C. Sess. Law 2021-56. For the non-municipal contests, if no candidate reaches the vote share necessary to become the party nominee after the first primary (at least 30% of the vote plus one), a second primary may be held on April 26, or May 17 if a federal office is involved. *See* N.C.G.S. § 163-111. For municipal contests that use the primary-and-election or election-and-runoff methods of voting, the second municipal election will be held on April 26, unless a second primary is being held in a federal contest, in which case the municipal second election will also be held on May 17.¹

4. In our state, the county boards of elections administer elections in each county, including, among other things, providing for the distribution of voting systems, ballots, and pollbooks, training elections officials, conducting absentee and in-person voting, and tabulation and canvassing of results. The State Board is responsible for development and enhancement of our Statewide Elections Information Management System ("SEIMS"), which includes managing functions that assign voters to their relevant voting districts, a process known as "geocoding." The State Board also supports the county boards and their vendors in the preparation and proofing of ballots.

5. For North Carolina electoral districts, the geocoding process starts when the State Board receives district shapefiles from the legislature, which include geographic data setting the boundaries for legislative districts. The State Board's staff then works with county board staff to

¹ North Carolina municipalities conduct elections using one of four election methods: nonpartisan plurality, nonpartisan election and runoff, nonpartisan primary and election, and partisan primary and election. *See* N.C.G.S. §§ 163-291, -292, -293, -294.

use the shapefiles to update the voting jurisdictions that are assigned to particular addresses in SEIMS. This process then allows the State Board to work with county board staff and ballot-preparation vendors to prepare ballots. The State Board must perform an audit of the geocoding to ensure its accuracy before ballot preparation.

6. The amount of time required for geocoding generally corresponds with the number of district boundaries that are redrawn within the counties. In this case, most counties will experience changes to their districts following decennial redistricting—including state legislative, congressional, and local jurisdiction districts—and a significant number of those counties are likely to have newly drawn district boundaries within the counties' borders. Staff estimates that, given what we currently know, geocoding would likely take at least 21 days (including holidays and weekends) for the 2022 primary.

7. Ballot preparation and proofing can begin after geocoding is complete and candidate filing closes. For the 2022 primary elections, candidate filing occurs between noon on December 6, 2021, and noon on December 17, 2021. *See* N.C.G.S. § 163-106.2(a). The process of generating and proofing ballots is complex and involves multiple technical systems and quality-control checkpoints that precede ballot printing and the coding of voting machines. This includes proofing each ballot style for content and accuracy, ballot printing, and delivery of all ballot materials to county boards. Staff estimates that, given what we currently know, ballot preparation and proofing would likely take between 17 and 21 days (including holidays and weekends) for the 2022 primary, depending on the number of ballot styles to prepare, which largely depends on the degree of change to intracounty district lines, and the number of contested nominations.

8. Geocoding and candidate filing may occur concurrently, although that is not ideal

because the completion of geocoding permits candidates and county boards to verify if a candidate desiring to file for election lives in a particular district. It is possible, however, to check candidate eligibility while geocoding is still taking place.

9. In contrast, geocoding and ballot preparation must occur consecutively. Ballots cannot be prepared until the proper geographical boundaries for voting districts are set in SEIMS and the candidates are known after the candidate-filing period closes. Additionally, the end-of-year holidays could pose difficulties for available staff time for the State Board, county boards, and vendors. Therefore, the total time required for geocoding and ballot preparation is likely between 38 and 42 days (including holidays and weekends).

10. Under N.C.G.S. § 163-227.10(a), the State Board must begin mailing absentee ballots 50 days prior to the primary election day, unless the State Board authorizes a reduction to 45 days or there is “an appeal before the State Board or the courts not concluded, in which case the board shall provide the ballots as quickly as possible upon the conclusion of such an appeal.” The federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires that absentee ballots that include elections for federal office be made available by 45 days before a primary election, *see* 52 U.S.C. § 20302(a)(8)(A), unless I request a waiver of this requirement based on a legal contest delaying the preparation of ballots (or another enumerated hardship), and that waiver is granted by the federal official designated to administer UOCAVA, *see id.* § 20302(g). The state requesting a waiver must present a comprehensive plan that provides absentee UOCAVA voters sufficient time to receive and submit absentee ballots they have requested in time to be counted in the federal election.² Based on the current primary date of March 8, 2022, 50 days before the primary election falls on January 17, 2022; but because that

² https://www.fvap.gov/uploads/FVAP/EO/2012_waiver_guidance.pdf.

day is a holiday, the county boards must be prepared to begin distributing absentee ballots on the prior business day, which is January 14, 2022. The 45-day federal deadline falls on January 22, 2022 for the primary election; but because that day is a Saturday, in practice, the federal ballot distribution deadline is Friday, January 21, 2022.

11. In sum, the State Board would need to receive the shapefiles for geocoding and ballot preparation between now and 38 to 42 days before the deadline for distributing absentee ballots. Currently, that deadline is January 14, 2022, which means any new shapefiles must arrive between now and December 3–7, 2021. If that deadline were moved to January 21, 2022, new shapefiles would need to arrive between now and December 10–14, 2021.

12. If the deadlines for distributing absentee ballots were extended beyond what is required by UOCAVA, the State Board would also have to factor in additional administrative steps that must be prepared before in-person voting occurs. Currently, in-person early voting is set to begin on February 17, 2022 for the 2022 primary.

13. Before in-person voting occurs, the State Board must work with county boards to load data onto physical media cards that are placed in voting tabulation machines, a process called “burning media.” The media cards ensure that the tabulators anticipate the layout of ballots and properly attribute votes based on the ballot markings. The county boards must also conduct logic and accuracy testing to ensure that tabulation machines accurately read ballots and to correct any errors in coding. Staff estimates that burning media, preparing ballot marking devices and tabulators, and logic and accuracy testing would likely take the counties 14 days. After that process, the State Board works with the county boards to conduct a mock election, which takes one day, and generally affords two weeks thereafter to remedy any technical problems identified during the mock election. That two-week period could be reduced, but the

State Board generally believes that the two-week period fully insures against risks associated with technical problems that may be identified in the mock election.

14. Accordingly, regardless of when the absentee ballot distribution deadline falls, allowing 29 days after ballots have been prepared to prepare for in-person election voting is preferable. Under the current deadlines for distributing absentee ballots, which falls roughly a month before early voting begins, these processes can be accommodated. The time requirements for these processes would only become relevant if the absentee distribution deadline is shortened to less than what is currently required by statute.

15. If the Court were to order a separate primary for the challenged contests, a different set of administrative requirements would be triggered that could ultimately lead to disruption of the general election in the fall.

16. First, it is not technically possible to perform geocoding while in-person voting is occurring, and it is difficult to perform geocoding during the canvass period after the election. This is because making changes in SEIMS related to geocoding inhibits the actual voting process. County canvass takes place 10 days following an election. Generally, at that point, geocoding may begin, assuming no recount has been ordered. Accordingly, we recommend that geocoding for any delayed primary not begin any earlier than March 19, 2022. Relying on the aforementioned estimates, it would take between 38 and 42 days to geocode and prepare ballots for a separate primary. Candidate filing could occur before or simultaneous with geocoding.

17. However, if this Court chose to delay only the contests challenged by this action and allowed the other races to proceed on March 8, 2022 (judicial, prosecutorial, county, and municipal races), in order to accommodate a second primary or second municipal election for those races (see paragraph three above) on April 26 or May 17, the geocoding time period would

be interrupted as there will be a second blackout period for geocoding from April 7 to May 6 (if the election is April 26), or April 28 to May 27 (if the election is May 17). This represents an interruption in geocoding of 30 days, resulting in the work of geocoding and ballot preparation not being completed until approximately May 26-30, 2022, at the earliest. At that point, absentee ballots could be distributed pursuant to N.C.G.S. § 163-227.10(a).

18. Second, state law regarding the deadline for distributing absentee ballots would again require 50 days' time prior to the primary election day, unless the State Board reduced that time to 45 days or there is "an appeal before the State Board or the courts not concluded, in which case the board shall provide the ballots as quickly as possible upon the conclusion of such an appeal." N.C.G.S. § 163-227.10(a). The federal UOCAVA deadline would not apply if the primary did not involve federal offices. Therefore, accounting for absentee ballot distribution deadlines, the earliest that a separate primary could occur is 45 days later, which would result in a primary election day of Tuesday, July 12, 2022.

19. Third, one-stop early voting would have to begin 20 days before the primary election day under N.C.G.S. § 163-227.2(b). Accordingly, all of the administrative processes that must occur before in-person voting begins (geocoding, ballot preparation, burning media, preparing touch-screen ballots, logic and accuracy testing, mock election, and technical fix period, among other things), which are estimated to take between 67 and 71 days total, would need to occur between March 19, 2022, and 20 days before the date of the separate primary, with an additional 30 day delay caused by the blackout period around the second primary as described in paragraph 17 above. Therefore, even putting aside absentee ballot distribution deadlines and then accounting for in-person voting timelines, the earliest that separate primary could occur is, again, Tuesday, July 12, 2022.

20. Such a late date for a primary would make any second primary, if triggered and requested under N.C.G.S. § 163-111, infeasible. A second primary under this scenario would occur on either August 30, 2022 or September 20, 2022 (*i.e.*, 7 or 10 weeks after the initial primary, depending on whether there was a federal contest involved). This would interfere with the August 19 to August 23 deadline to begin preparing ballots for the general election. Absentee ballots must be mailed out for the general election on September 9, 2022 pursuant to N.C.G.S. § 163-227.10(a), and staff require 17-21 days to prepare those ballots ahead of that date as described in paragraph 7 above.

21. Fourth, there are additional administrative challenges that counties would face if a separate primary were held. Among these challenges would be recruiting poll workers and securing voting locations, along with the associated costs. Increasingly, county elections officials have found it necessary to spend more time recruiting early voting and election day poll workers, especially because of statutorily mandated early voting hours and technological advances in many counties that require elections workers to be familiar with computers. Additionally, a large portion of precinct voting locations in the state are housed in places of worship or in schools, with still others located in privately owned facilities. Identifying and securing appropriate precinct voting locations and one-stop early voting sites requires advance work by county board staff and coordination with the State Board.

22. In sum, enjoining and delaying only the challenged primary contests would result in significantly greater administrative burden on the boards of elections, could result in significant voter confusion, and could potentially lead to an administratively infeasible timeline in late summer. In contrast, if all currently scheduled contests set for March 8, 2022 were moved to a later date, this would still raise significant administrative burdens, but it would be possible to

implement as geocoding of any new shapefiles can begin immediately upon receipt by the State Board, without blackout interruptions, and voters would not need to keep track of multiple primary dates for the 2022 elections.

23. Under those circumstances, and backtracking from the earliest relevant deadline for the general election—the ballot preparation deadline of August 19 to August 23³—the second primary can occur no later than Tuesday, July 26, 2022,⁴ and the first primary can occur no later than Tuesday, May 17, 2022,⁵ which in turn requires that the State Board be provided with any new shapefiles no later than February 14 to 18, 2022.⁶

³ Absentee ballots must be mailed out for the general election on September 9, 2022 pursuant to N.C.G.S. § 163-227.10(a), and staff require 17-21 days to prepare those ballots ahead of that date as described in paragraph 7 above.

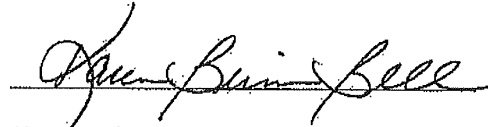
⁴ 21 days are required by the State Board to complete statewide canvass and certify the election results, which must be completed prior to preparing ballots. This results in a date range of Friday, July 29 to Sunday, August 2, with Tuesday, July 26 being the nearest feasible day to hold the election.

⁵ The allowance of 10 weeks is required between the first and second primaries, pursuant to N.C.G.S. § 163-111(e).

⁶ 38 to 42 days to geocode and prepare ballots plus the 50 days before the election when absentee ballots must be mailed.

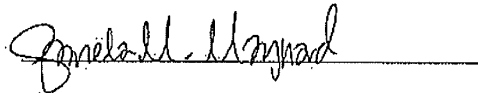
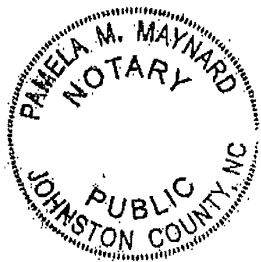
This concludes my affidavit.

This the 23rd day of November, 2021.



Karen Brinson Bell, Executive Director
N.C. State Board of Elections

Sworn to and subscribed before me this 23rd day of November, 2021.



(Notary Public)

My commission expires: 11-2-23

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

2021 DEC -3 PM 3:35

21-CVS-15426

WAKE CO., C.S.C.

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, INC.; HENRY
M. MICHAUX, JR.; DANDRIELLE LEWIS;
THIMOTHY CHARTIER; TALIA FERNOS;
KATHERINE NEWHALL; R. JASON
PARSLEY; EDNA SCOTT; ROBERTA
SCOTT; YVETTE ROBERTS; JEREANN
KING JOHNSON; REVEREND REGINALD
WELLS; YARBROUGH WILLIAMS, JR.;
REVEREND DELORIS L. JERMAN;
VIOLA RYALS FIGUEROA; and COSMOS
GEORGE,

CONSOLIDATION ORDER

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, *in his
official capacity as Chair of the House
Standing Committee on Redistricting*;
SENATOR WARREN DANIEL, *in his
official capacity as Co-Chair of the Senate
Standing Committee on Redistricting and
Elections*; SENATOR RALPH E. HISE, JR.,
*in his official capacity as Co-Chair of the
Senate Standing Committee on Redistricting
and Elections*; SENATOR PAUL NEWTON,
*in his official capacity as Co-Chair of the
Senate Standing Committee on Redistricting
and Elections*; REPRESENTATIVE
THIMOTHY K. MOORE, *in his official
capacity as Speaker of the North Carolina
House of Representatives*; SENATOR
PHILIP E. BERGER, *in his official capacity
as President Pro Tempore of the North
Carolina Senate*; THE STATE OF NORTH
CAROLINA; THE NORTH CAROLINA
STATE BOARD OF ELECTIONS; DAMON
CIRCOSTA, *in his official capacity as
Chairman of the North Carolina State Board
of Elections*; STELLA ANDERSON, *in her
official capacity as Secretary of the North
Carolina State Board of Elections*; JEFF
CARMON III, *in his official capacity as*

- 2 -

Member of the North Carolina State Board of Elections; STACY EGGERS IV, in her official capacity as Member of the North Carolina State Board of Elections; TOMMY TUCKER, in his official capacity as Member of the North Carolina State Board of Elections; and KAREN BRINSON BELL, in her official capacity as Executive Director of the North Carolina State Board of Elections,

Defendants.

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21-CVS-500085

REBECCA HARPER; AMY CLARE OSEROFF; DONALD RUMPH; JOHN ANTHONY BALLA; RICHARD R. CREWS; LILY NICOLE QUICK; GETTYS COHEN JR.; SHAWN RUSH; JACKSON THOMAS DUNN, JR.; MARK PETERS; KATHLEEN BARNES; VIRGINIA WALTERS BRIEN; DAVID DWIGHT BROWN,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, *in his official capacity as Chair of the House Standing Committee on Redistricting; SENATOR WARREN DANIEL, in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting and Elections; SENATOR RALPH E. HISE, JR., in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting and Elections; SENATOR PAUL NEWTON, in his official capacity as Co-Chair of the Senate Standing Committee on Redistricting and Elections; REPRESENTATIVE THIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives; SENATOR*

CONSOLIDATION ORDER

- 3 -

PHILIP E. BERGER, *in his official capacity as President Pro Tempore of the North Carolina Senate*; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, *in his official capacity as Chairman of the North Carolina State Board of Elections*; STELLA ANDERSON, *in her official capacity as Secretary of the North Carolina State Board of Elections*; JEFF CARMON III, *in his official capacity as Member of the North Carolina State Board of Elections*; STACY EGGERS IV, *in her official capacity as Member of the North Carolina State Board of Elections*; and TOMMY TUCKER, *in his official capacity as Member of the North Carolina State Board of Elections*,

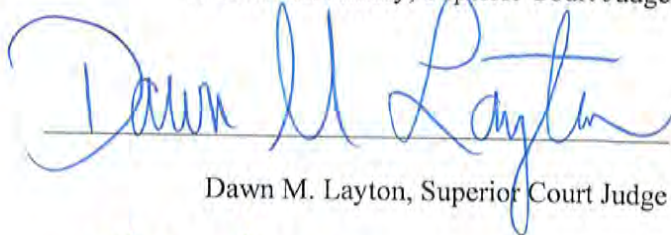
Defendants.

In order to promote judicial efficiency and expediency, this Court will, upon its own motion, exercise its discretion, pursuant to Rule 42(a) of the North Carolina Rules of Civil Procedure, to consolidate these two actions due to this Court's conclusion that the two cases involve common questions of fact and issues of law. The case of *NCLCV v. Hall* (21-CVS-15426) will be the lead case.

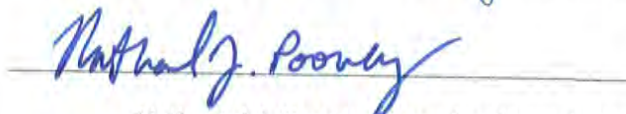
This the 3rd day of December, 2021.



A. Graham Shirley, Superior Court Judge



Dawn M. Layton, Superior Court Judge



Nathaniel J. Poovey, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission addressed as follows:

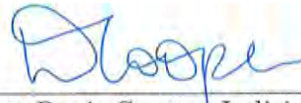
Stephen D. Feldman
Adam K. Doerr
Erik R. Zimmerman
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
adoerr@robinsonbradshaw.com
ezimmerman@robinsonbradshaw.com
Counsel for Plaintiffs

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
NELSON MULLINS RILEY &
SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Phillip.strach@nelsonmullins.com
Tom.farr@nelsonmullins.com
Alyssa.riggins@nelsonmullins.com
*Counsel for Defendants Destin Hall, Warren
Daniel, Ralph E. Hise, Jr., Paul Newton, Timothy
K. Moore, and Philip E. Begrer*

Terence Steed
Amar Majmundar
Stephanie A. Brennan
NORTH CAROLINA DEPARTMENT
OF JUSTICE
Post Office Box 629
Raleigh, NC 27602
tsteed@ncdoj.org
amajmundar@ncdoj.org
sbrennan@ncdoj.org
*Counsel for Defendants State of North Carolina,
North Carolina State Board of Elections, Damon
Circosta, Stella Anderson, Jeff Carmon III, Stacy
Eggers IV, Tommy Tucker, and Karen Brinson
Bell*

Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 3rd day of December 2021.



B. Davis Cooper, Judicial Assistant
Bettye.D.Cooper@nccourts.org

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA LEAGUE, OF
CONSERVATION VOTERS, INC.;
HENRY M. MICHAUX, JR.;
DANDRIELLE LEWIS; TIMOTHY
CHARTER; TALIA FERNOS;
KATHERINE NEWHALL; R. JASON
PARSLEY; EDNA SCOTT; ROBERTA
SCOTT; YVETTE ROBERTS;
JEREANN KING JOHNSON;
REVEREND REGINALD WELLS;
YARBROUGH WILLIAMS, JR.;
REVEREND DELORIS L. JERMAN;
VIOLA RYALS FIGUEROA; and
COSMOS GEORGE,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the
House Standing Committee on
Redistricting; SENATOR WARREN
DANIEL, in his official capacity as Co-
Chair of the Senate Standing
Committee on Redistricting and
Elections; SENATOR RALPH E. HISE,
JR., in his official capacity as Co-Chair
of the Senate Standing Committee on
Redistricting and Elections; SENATOR
PAUL NEWTON, in his official
capacity as Co-Chair of the Senate
Standing Committee on Redistricting
and Elections; REPRESENTATIVE
TIMOTHY K. MOORE, in his official
capacity as Speaker of the North
Carolina House of Representatives;
SENATOR PHILIP E. BERGER, in his
official capacity as President
Pro Tempore of the North Carolina
Senate; THE STATE

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2021 DEC -3 PM 3:35 FILE NO. 21 CVS 015426

WAKE CO., C.S.C.

BY

ORDER ON PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION

OF NORTH CAROLINA; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as Chairman of the North Carolina State Board of Elections; STELLA ANDERSON, in her official capacity as Secretary of the North Carolina State Board of Elections; JEFF CARMON III, in his official capacity as Member of the North Carolina State Board of Elections; STACY EGGERS IV, in his official capacity as Member of the North Carolina State Board of Elections; TOMMY TUCKER, in his official capacity as Member of the North Carolina State Board of Elections; and KAREN BRINSON BELL, in her official capacity as Executive Director of the North Carolina State Board of Elections,

Defendants

STATE OF NORTH CAROLINA
COUNTY OF WAKE

REBECCA HARPER; AMY CLARE OSEROFF; DONALD RUMPH; JOHN ANTHONY BALLA; RICHARD R. CREWS; LILY NICOLE QUICK; GETTYS COHEN JR.; SHAWN RUSH; JACKSON THOMAS DUNN, JR.; MARK S. PETERS; KATHLEEN BARNES; VIRGINIA WALTERS BRIEN; DAVID DWIGHT BROWN,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL,
IN HIS OFFICIAL CAPACITY AS

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 500085

ORDER ON PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION

CHAIR OF THE HOUSE STANDING COMMITTEE ON REDISTRICTING; SENATOR WARREN DANIEL, IN HIS OFFICIAL CAPACITY AS CO-CHAIR OF THE SENATE STANDING COMMITTEE ON REDISTRICTING AND ELECTIONS; SENATOR RALPH HISE, IN HIS OFFICIAL CAPACITY AS CO-CHAIR OF THE SENATE STANDING COMMITTEE ON REDISTRICTING AND ELECTIONS; SENATOR PAUL NEWTON, IN HIS OFFICIAL CAPACITY AS CO-CHAIR OF THE SENATE STANDING COMMITTEE ON REDISTRICTING AND ELECTIONS; SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES TIMOTHY K. MOORE; PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE PHILIP E. BERGER; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; STELLA ANDERSON, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; JEFF CARMON III, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; STACY EGGERS IV, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; TOMMY TUCKER, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH

CAROLINA STATE BOARD OF
ELECTIONS,

Defendants

THESE MATTERS came on to be heard before the undersigned three-judge panel on December 3, 2021. Upon considering the pleadings, parties' briefs and submitted materials, arguments, pertinent case law, and the record established thus far, the Court finds and concludes, for the purposes of this Order, as follows:

As an initial matter, in order to promote judicial efficiency and expediency, this court has exercised its discretion, pursuant to Rule 42 of the North Carolina Rule of Civil Procedure, to consolidate these two cases for purposes of consideration of the arguments and entry of this Order, due to this court's conclusion that the two cases involve common questions of fact and issues of law. Because the claims do not completely overlap, the various claims of the parties will be addressed separately within this order.

In this litigation, the North Carolina League of Conservation Voters, Inc. and individual Plaintiffs in Civil Action 21 CVS 015426 (hereinafter "NCLCV Plaintiffs") have asserted the following causes of action against Defendants:

1. That Defendants' enacted redistricting maps for state legislative and congressional districts (hereinafter referred to as "Enacted Plans") constitute extreme partisan gerrymanders in violation of the Free Elections Clause under Article I, Section 10 of the North Carolina Constitution; the Equal Protection

Clause under Article I, Section 19 of the North Carolina Constitution; the Free Speech and Free Assembly Clauses under Article I, Sections 12 and 14 of the North Carolina Constitution; and

2. That the Enacted Plans cause unlawful racial vote dilution in violation of the Free Elections Clause under Article I, Section 10 of the North Carolina Constitution and the Equal Protection Clause under Article I, Section 19 of the North Carolina Constitution; and
3. That the Enacted Plans were drawn in violation of the Whole County Provisions of Article II, Sections 3(3) and 5(3) of the North Carolina Constitution, and *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*.

NCLCV Plaintiffs have moved for a preliminary injunction solely on their partisan gerrymandering-based claims.

NCLCV Plaintiffs seek to enjoin Defendants, their agents, officers, and employees from preparing for, administering, or conducting the March 8, 2022 primary elections and any subsequent elections for Congress, the North Carolina Senate, or the North Carolina House of Representatives using the Enacted Plans. Plaintiffs further request that to the extent the General Assembly fails to adopt redistricting plans—within two weeks from the date of this Court’s entry of a preliminary injunction—that adequately remedy the Enacted Plans, then the 2022 primary elections and 2022 general elections for Congress, North Carolina Senate, and the North Carolina House of Representatives shall be conducted under Plaintiffs’ Optimized Maps, as outlined in their Verified Complaint.

The individual Plaintiffs in Civil Action 21 CVS 500085 (hereinafter “Harper Plaintiffs”) have asserted the following causes of action against Defendants, claiming that the Enacted Plans for congressional districts are unlawful partisan gerrymanders in violation of: the Free Elections Clause of Article I, Section 10 of the North Carolina

Constitution; the Equal Protection Clause of Article I, Section 19 of the North Carolina Constitution; and the Freedom of Speech and Freedom of Assembly Clauses of Article I, Sections 12 and 14 of the North Carolina Constitution.

Harper Plaintiffs seek to enjoin Defendants, their agents, officers, and employees from preparing for, administering, or conducting the March 8, 2022, primary elections and any subsequent elections for the United State House of Representatives using the Enacted Plans. Harper Plaintiffs further prays this Court set forth a remedial process to create a new plan that complies with the North Carolina Constitution, to include a court-ordered remedial plan if the General Assembly fails to timely enact an adequate remedial plan.

Legislative Defendants (the Speaker of the North Carolina House of Representatives, the President Pro Tempore of the Senate, and the redistricting committees of each respective chamber) have responded to plaintiffs' motions by asserting that Plaintiffs' lack standing, present a political question, and that the Free Elections, Equal Protection, Freedom of Speech and Freedom of Assembly claims have been misapprehended by Plaintiffs.

State Defendants (the State of North Carolina, State Board of Elections, members of the State Board of Elections in their official capacity, and the Director of the State Board of Elections) have taken no position on the merits of Plaintiffs' motions for preliminary injunction but have provided information as to election administration concerns and deadlines.

PROCEDURAL HISTORY

On August 12, 2021, the United States Census Bureau released new census data. North Carolina gained a congressional seat due to population growth pursuant to Article I,

Section 2, Clause 3 of the United States Constitution, and Title 13 of the United States Code. On November 4, 2021, the General Assembly enacted S.L. 2021-173 (North Carolina Senate districts); S.L. 2021-174 (United States House of Representatives districts); S.L. 2021-175 (North Carolina House of Representatives districts). NCLCV Plaintiffs filed their Complaint in this matter on November 16, 2021, contemporaneously with the present Motion for Preliminary Injunction. Harper Plaintiffs filed their Complaint in this matter on November 18, 2021, and the present Motion for Preliminary Injunction on November 30, 2021. The undersigned three-judge panel was assigned to preside over the NCLCV and Harper matters pursuant to N.C.G.S. § 1-267.1 on November 19, 2021, and November 22, 2021, respectively.

POLITICAL QUESTION DOCTRINE

Plaintiffs' claims are not likely to succeed because they are not justiciable. North Carolina courts lack jurisdiction over political questions. *See, e.g., Bacon v. Lee*, 353 N.C. 696, 716, 549 S.E.2d 840, 854 (2001). The State Constitution delegates to the General Assembly the power to create congressional districts. Because a constitution cannot be in violation of itself, a delegation of a political task to a political branch of government implies a delegation of political discretion. Because Plaintiffs' claims are not justiciable, they have not shown a likelihood of success on the merits.

STANDING OF PLAINTIFFS

Plaintiffs are unlikely to establish standing. It is clear that a voter is only directly injured by specific concerns with that voter's districts. *Gill v. Whitford*, 138 S. Ct. 1916,

1932 (2018). A plaintiff has standing to challenge the district in which that plaintiff lives, but cannot raise generalized grievances about redistricting plans. Additionally, a “hope of achieving a Democratic [or Republican] majority in the legislature” is not a particularized harm. *Id.* Additionally, a district’s partisan composition is not a cognizable injury is a similar composition would result “under any plausible circumstance.” *Id.* at 1824, 1932.

None of the Harper Plaintiffs reside in six of the challenged congressional districts (CD2, CD3, CD5, CD8, CD12, and CD13). Additionally, though the Harper Plaintiffs claim that Democratic voters are “packed” in CD9 and CD6, they admit that these districts would be “packed” with Democratic voters in any event. This is also true for the “cracking” claimed in CD1, CD7, and CD10. For the remaining districts (CD4 and CD14), the Harper Plaintiffs are presumed to be represented by their designated representatives and it is therefore not self-evident that these individual plaintiffs are harmed.

The NCLCV Plaintiffs reside in only 6 of the congressional districts, 8 of the Senate districts, and 9 of the House districts. The individual plaintiffs do not establish that their own districts would shift from Republican-leaning to Democratic-leaning under a different configuration or that they are prevented from electing their candidates of choice. The organizational plaintiffs have not shown how the redistricting legislation has negatively impacted their ability to complete their organizational mission.

The Plaintiffs are unlikely to prove standing and therefore have not shown a likelihood of success on the merits.

INJUNCTIVE RELIEF

“It is well settled in this State that the courts have the power, and it is their duty in proper cases, to declare an act of the General Assembly unconstitutional—but it must be

plainly and clearly the case. If there is any reasonable doubt, it will be resolved in favor of the lawful exercise of their powers by the representatives of the people.” *City of Asheville v. State*, 369 N.C. 80, 87-88, 794 S.E.2d 759, 766 (2016) (quoting *Glenn v. Bd. of Educ.*, 210 N.C. 525, 529-30, 187 S.E. 781, 784 (1936)); *State ex rel. Martin v. Preston*, 325 N.C. 438, 449, 385 S.E.2d 473, 478 (1989). “An act of the General Assembly will be declared unconstitutional only when ‘it [is] plainly and clearly the case,’ . . . and its unconstitutionality must be demonstrated beyond a reasonable doubt.” *Town of Boone v. State*, 369 N.C. 126, 130, 794 S.E.2d 710, 714 (2016).

Plaintiffs have moved for a preliminary injunction pending a resolution of this action on the merits. “The purpose of a preliminary injunction is ordinarily to preserve the *status quo* pending trial on the merits. Its issuance is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities.” *State ex rel. Edmisten v. Fayetteville Street Christian School*, 299 N.C. 351, 357, 261 S.E.2d 908, 913 (1980). A preliminary injunction is an “extraordinary remedy” and will issue “only (1) if a plaintiff is able to show *likelihood* of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff’s rights during the course of litigation.” *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759-60 (1983) (emphasis in original); see also N.C.G.S. § 1A-1, Rule 65(b). When assessing the preliminary injunction factors, the trial judge “should engage in a balancing process, weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted. In effect, the harm alleged by the plaintiff must satisfy a standard of relative substantiality as well as irreparability.” *Williams v. Greene*, 36 N.C. App. 80, 86, 243 S.E.2d 156, 160 (1978).

Injunctive relief “may be classified as ‘prohibitory’ and ‘mandatory.’ The former are preventive in character, and forbid the continuance of a wrongful act or the doing of some threatened or anticipated injury; the latter are affirmative in character, and require positive action involving a change of existing conditions—the doing or undoing of an act.” *Roberts v. Madison Cty. Realtors Ass’n*, 344 N.C. 394, 399-400, 474 S.E.2d 783, 787 (1996) (citations and quotation omitted).

Status Quo

Plaintiffs have asked that this Court enjoin the 2021 congressional and state legislative district legislation and to move the March 2022 primary schedule. However, this requested relief alters the status quo. Plaintiffs are not asking this Court to restore what has been unlawfully changed, but to create a new condition that has not existed to this point. *See Seaboard Air Line R. Co. v. A. Coast Line R. Co.*, 287 N.C. 88, 96, 74 S.E.2d 430, 436 (1953). Plaintiffs here have never voted under a redistricting plan like the one they request and so are asserting rights that have never existed. *Id.*

Likelihood of Success on the Merits

Plaintiffs burden on a motion for preliminary injunction is to show a likelihood of success in proving beyond a reasonable doubt that the enacted congressional and state legislative districts are unconstitutional. This Court finds on these facts that Plaintiffs have failed to carry this burden.

The Supreme Court of North Carolina has ruled that “[t]he General Assembly may consider partisan advantage and incumbency protection in the application of its discretionary redistricting decisions.” *Stephenson v. Bartlett*, 355 N.C. 534, 371, 562 S.E.2d 377, 390 (2002). The North Carolina Constitution “clearly contemplates districting by

political entities” and redistricting is “root-and-branch a matter of politics.” *Vieth v. Jubelirer*, 541 U.S. 267, 285 (2004) (plurality op.).

Plaintiff have not shown a likelihood of success on their Free Elections Clause claims. The decision in *Common Cause v. Lewis*, No. 18-CVS-014001, 2019 WL 4569584 relied heavily on the evidence of intentionally partisan gerrymandering, stating that they were “designed specifically to ensure that Democrats would not win a majority.”

While the decision in *Common Cause v. Lewis* is not binding on this Court, it seems clear that some evidence of intent is required to prove of claim of extreme partisan gerrymandering. Plaintiffs have not claimed intent. In fact, the evidence presented shows that the General Assembly did not use any partisan data in the creation of these congressional and state legislative districts, suggesting a lack of intent.

Plaintiffs have also not shown a likelihood of success on the merits on their Equal Protection Clause claims. Membership in a political party is not a suspect classification. *See Libertarian Party of N. Carolina v. State*, 365 N.C. 41, 51-53, 707 S.E.2d 199, 206 (2011). Additionally, political considerations in redistricting do not impinge on the fundamental right to vote. These considerations do not deny the opportunity to vote nor do they result in the unequal weighing of votes.

Plaintiffs likewise have not shown a likelihood of success on the merits of their Freedom of Speech and Assembly claims. Political considerations in redistricting do not place any restraints on speech and do not discourage those who wish to speak. Additionally, associational rights do not guarantee a favorable outcome, only the ability to participate in the political process. These rights are not infringed by political considerations in redistricting.

Additionally, Plaintiffs assert claims regarding the congressional district legislation only under the North Carolina Constitution. However, it is the federal Constitution which

provides the North Carolina General Assembly with the power to establish such districts. In order to address these claims, this Court must derive authority from the federal Constitution. Since claims under the federal Constitution have not been alleged, Plaintiffs have not shown a likelihood of success on the merits.

Irreparable Harm

As discussed above, Plaintiffs have challenged districts in which they do not live, districts that would not likely be meaningfully different under any reasonable maps, and have asserted only abstract harms. They have not alleged that they are unable to obtain representation in Congress or the General Assembly by whomever is ultimately elected. As such, they have not shown that they will suffer irreparable harm should their request be denied.

Weighing of the Equities

Though Plaintiffs have not shown that they will suffer harm should their request be denied, the State and the public will suffer irreparable harm should the request be granted. It is obvious that any time a statute is enjoined, the State suffers irreparable harm. *See Maryland v. King*, 567 U.S. 1301, 133 (2012). This is particularly true in the area of elections due to the State's indisputably compelling interest in preserving the integrity of the election process. *See Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989). Additionally, an injunction will cause significant disruption, confusion, and uncertainty in the election process. As such, the equities weigh in favor of denial.


CONCLUSION

Under these circumstances, the Court, in its discretion and after a careful balancing of the equities, concludes that the requested injunctive relief shall not issue in regard to the 2021 Enacted Plans. To the extent necessary, this Court determines that there is no just reason for delay and certifies this order for immediate appeal pursuant to Rule 54 of the North Carolina Rules of Civil Procedure.

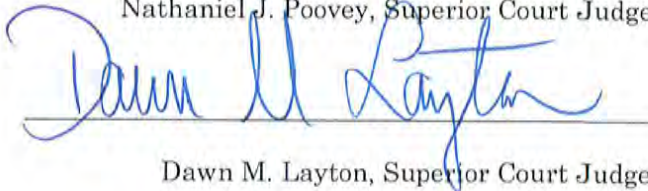
This the 3 day of December, 2021.

A handwritten signature in blue ink, appearing to read "A. Graham Shirley", written over a horizontal line.

A. Graham Shirley, Superior Court Judge

A handwritten signature in blue ink, appearing to read "Nathaniel J. Poovey", written over a horizontal line.

Nathaniel J. Poovey, Superior Court Judge

A handwritten signature in blue ink, appearing to read "Dawn M. Layton", written over a horizontal line.

Dawn M. Layton, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission addressed as follows:

Stephen D. Feldman
Adam K. Doerr
Erik R. Zimmerman
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
adoerr@robinsonbradshaw.com
ezimmerman@robinsonbradshaw.com
Counsel for Plaintiffs

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
NELSON MULLINS RILEY &
SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Phillip.strach@nelsonmullins.com
Tom.farr@nelsonmullins.com
Alyssa.riggins@nelsonmullins.com
*Counsel for Defendants Destin Hall, Warren
Daniel, Ralph E. Hise, Jr., Paul Newton, Timothy
K. Moore, and Philip E. Begrer*

Terence Steed
Amar Majmundar
Stephanie A. Brennan
NORTH CAROLINA DEPARTMENT
OF JUSTICE
Post Office Box 629
Raleigh, NC 27602
tsteed@ncdoj.org
amajmundar@ncdoj.org
sbrennan@ncdoj.org
*Counsel for Defendants State of North Carolina,
North Carolina State Board of Elections, Damon
Circosta, Stella Anderson, Jeff Carmon III, Stacy
Eggers IV, Tommy Tucker, and Karen Brinson
Bell*

Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 3rd day of December 2021.


B. Davis Cooper, Judicial Assistant
Bettye.D.Cooper@nccourts.org

Electronically Filed
2021-12-03 19:36:30

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

No.21 CVS 500085

REBECCA HARPER, et al.,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, et al.,

Defendants.

NOTICE OF APPEAL

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Plaintiffs hereby give notice of appeal to the North Carolina Court of Appeals from the order entered on December 3, 2021, in the North Carolina Superior Court for Wake County denying Plaintiffs' Motion for Preliminary Injunction.

Dated: December 3, 2021

By: 

PATTERSON HARKAVY LLP

Narendra K. Ghosh, NC Bar No. 37649
Burton Craige, NC Bar No. 9180
Paul E. Smith, NC Bar No. 45014
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Plaintiffs

ELIAS LAW GROUP LLP

Lalitha D. Madduri*
Jacob D. Shelly*
Graham W. White*
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

Abha Khanna*
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
AKhanna@elias.law

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

Elisabeth S. Theodore*
R. Stanton Jones*
Samuel F. Callahan*
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
elisabeth.theodore@arnoldporter.com

Counsel for Plaintiffs

** Pro hac vice application pending*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to the following counsel for defendants:


Amar Majmundar
Stephanie A. Brennan
Terence Steed
NC Department of Justice
P.O. Box 629
Raleigh, NC 27602
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
tsteed@ncdoj.gov

*Counsel for the State Board of Elections and
its members*

Phillip J. Strach
Alyssa Riggins
John E. Branch, III
Thomas A. Farr
Nelson Mullins Riley & Scarborough LLP
4140 Parklake Ave., Suite 200
Raleigh, NC 27612
phil.strach@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
john.branch@nelsonmullins.com
tom.farr@nelsonmullins.com

Counsel for the Legislative Defendants

This the 3rd day of December, 2021.


Narendra K. Ghosh

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426

FILED

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, INC.;
HENRY M. MICHAUX, JR., et al.

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

DEC -3 P 4: 24

WAKE CO. S.C.

BY

NOTICE OF APPEAL

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Plaintiffs hereby give notice of appeal to the North Carolina Court of Appeals from the Order entered on December 3, 2021 in the North Carolina Superior Court for Wake County denying Plaintiffs' Motion for Preliminary Injunction.

Dated: December 3, 2021

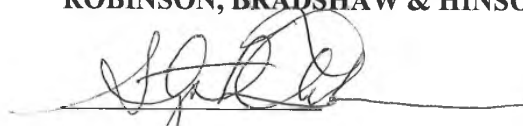
Respectfully submitted,

JENNER & BLOCK LLP

Sam Hirsch*
Jessica Ring Amunson*
Kali Bracey*
Zachary C. Schauf*
Karthik P. Reddy*
Urja Mittal*
JENNER & BLOCK LLP
1099 New York Avenue NW, Suite 900
Washington, D.C. 20001
(202) 639-6000
shirsch@jenner.com
zschauf@jenner.com

** Admitted pro hac vice*

ROBINSON, BRADSHAW & HINSON, P.A.



Stephen D. Feldman
North Carolina Bar No. 34940
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
(919) 239-2600
sfeldman@robinsonbradshaw.com

Adam K. Doerr
North Carolina Bar No. 37807
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
(704) 377-2536
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
North Carolina Bar No. 50247
ROBINSON, BRADSHAW & HINSON, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
(919) 328-8800
ezimmerman@robinsonbradshaw.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Appeal was served upon each of the parties to this action by electronic mail to counsel at the e-mail addresses indicated below and by First Class U.S. Mail to counsel at the addresses indicated below:

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
phillip.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
alyssa.riggins@nelsonmullins.com

Mark E. Braden*
Katherine McKnight*
Richard Raile*
Baker Hostetler LLP
1050 Connecticut Avenue NW, Suite 1100
Washington, DC 20036
mbraden@bakerlaw.com
kmcknight@bakerlaw.com
rraile@bakerlaw.com


*Counsel for Defendants Representative
Destin Hall, Senator Warren Daniel,
Senator Ralph E. Hise, Jr., Senator Paul
Newton, Representative Timothy K. Moore,
and Senator Phillip E. Berger*

**Pro hac vice motion forthcoming*

Terence Steed
Stephanie Brennan
Amar Majmundar
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27502-0629
tsteed@ncdoj.gov
sbrennan@ncdoj.gov
amajmundar@ncdoj.gov

*Counsel for Defendants the North
Carolina State Board of Elections,
Damon Circosta, Stella Anderson,
Jeff Carmon III, Stacy Eggers IV,
Tommy Tucker, Karen Brinson Bell;
and the State of North Carolina*

This 3rd day of December, 2021.


Stephen Feldman

No. 413P21

TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

REBECCA HARPER; AMY CLARE)
OSEROFF; DONALD RUMPH; JOHN)
ANTHONY BALLA; RICHARD R. CREWS;)
LILY NICOLE QUICK; GETTYS COHEN,)
JR.; SHAWN RUSH; JACKSON THOMAS)
DUNN, JR.; MARK S. PETERS; KATHLEEN)
BARNES; VIRGINIA WALTERS BRIEN; and)
DAVID DWIGHT BROWN)

Plaintiffs,)

v.)

REPRESENTATIVE DESTIN HALL, in his)
official capacity as Chair of the House)
Standing Committee on Redistricting;)
SENATOR WARREN DANIEL, in his official)
capacity as Co-Chair of the Senate Standing)
Committee on Redistricting and Elections;)
SENATOR RALPH HISE, in his official)
capacity as Co-Chair of the Senate Standing)
Committee on Redistricting and)
Elections; SENATOR PAUL NEWTON, in his)
official capacity as Co-Chair of the Senate)
Standing Committee on Redistricting and)
Elections; SPEAKER OF THE NORTH)
CAROLINA HOUSE OF)
REPRESENTATIVES, TIMOTHY K.)
MOORE; PRESIDENT PRO TEMPORE OF)
THE NORTH CAROLINA SENATE, PHILIP)
E. BERGER; THE NORTH CAROLINA)
STATE BOARD OF ELECTIONS; and)
DAMON CIRCOSTA, in his official capacity)

Defendants.)

-2-

NORTH CAROLINA LEAGUE OF)
CONSERVATION VOTERS, INC.; HENRY)
M. MICHAUX, JR.; DANDRIELLE LEWIS;)
TIMOTHY CHARTIER; TALIA FERNÓS;)
KATHERINE NEWHALL; R. JASON)
PARSLEY ; EDNA SCOTT ; ROBERTA)
SCOTT ; YVETTE ROBERTS; JEREANN)
KING JOHNSON; REVEREND REGINALD)
WELLS; YARBROUGH WILLIAMS, JR.;)
REVEREND DELORIS L. JERMAN; VIOLA)
RYALS FIGUEROA; and COSMOS GEORGE)
)
Plaintiffs,)
v.)
)
REPRESENTATIVE DESTIN HALL, in his)
official capacity as Chair of the House)
Standing Committee on Redistricting;)
SENATOR WARREN DANIEL, in his official)
capacity as Co-Chair of the Senate Standing)
Committee on Redistricting and Elections;)
SENATOR RALPH E. HISE, JR., in his of)
ficial capacity as Co-Chair of the Senate)
Standing Committee on Redistricting and)
Elections; SENATOR PAUL NEWTON, in)
his official capacity as Co-Chair of the Senate)
Standing Committee on Redistricting and)
Elections; REPRESENTATIVE TIMOTHY)
K. MOORE, in his official capacity as Speaker)
of the North Carolina House of)
Representatives; SENATOR PHILIP E.)
BERGER, in his official capacity as President)
Pro Tempore of the North Carolina Senate;)
THE STATE OF NORTH CAROLINA; THE)
NORTH CAROLINA STATE BOARD OF)
ELECTIONS; DAMON CIRCOSTA, in his)
official capacity as Chairman of the North)
Carolina State Board of Elections; STELLA)
ANDERSON, in her official capacity as)
Secretary of the North Carolina State Board)
of Elections; JEFF CARMON III, in his)
official capacity as Member of the North)

-3-

Carolina State Board of Elections; STACY)
EGGERS IV , in his official capacity as)
Member of the North Carolina State Board of)
Elections; TOMMY TUCKER, in his of ficial)
capacity as Member of the North Carolina)
State Board of Elections; and KAREN)
BRINSON BELL, in her official capacity as)
Executive Director of the North Carolina)
State Board of Elections)

* * * * *

ORDER

Plaintiffs’ Petitions for Discretionary Review Prior to Determination by the Court of Appeals, Motion to Suspend Appellate Rules to Expedite a Decision, and Motion to Suspend Appellate Rules and Expedite Schedule, filed in these consolidated cases on 6 December 2021 are allowed as follows:

In light of the great public interest in the subject matter of these cases, the importance of the issues to the constitutional jurisprudence of this State, and the need for urgency in reaching a final resolution on the merits at the earliest possible opportunity, the Court grants a preliminary injunction and temporarily stays the candidate-filing period for the 2022 elections for all offices until such time as a final judgment on the merits of plaintiffs’ claims, including any appeals, is entered and a remedy, if any is required, has been ordered.

1. Defendants are hereby enjoined from conducting elections for any public offices in the state on Tuesday, March 8, 2022 and, consistent with the response and affidavit

-4-

of the North Carolina State Board of Elections, defendants instead are directed to hold primaries for all offices on Tuesday, May 17, 2022. The trial court is authorized to issue any orders necessary to accomplish the resulting changes in the election schedule, including implementing shortened filing periods and other administrative adjustments.

2. Any individual who has already filed to run for public office in 2022 and whose filing has been accepted by the appropriate board of elections, will be deemed to have filed for the same office under the new election schedule for the May 2022 primary unless they provide timely notice of withdrawal of their candidacy to the board of elections during the newly-established filing period; and except to the extent that a remedy in this matter, if any, impacts a candidate's eligibility to hold the office for which they have currently filed. Any individual who has properly withdrawn their candidacy is free to file for any other office for which they may be eligible during the reopened filing period.

3. The trial court is directed to hold proceedings necessary to reach a ruling on the merits of plaintiffs' claims and to provide a written ruling on or before Tuesday, January 11, 2022.

4. Any party wishing to appeal the trial court's ruling must file a Notice of Appeal within two business days of the trial court's ruling, exclusive of weekends and holidays, in the trial court and with this Court, and should expect that an expedited briefing and hearing schedule in this Court will commence immediately thereafter.

-5-

The Petition for Writ of Supersedeas and Motion for Temporary Stay are dismissed as moot.

By order of the Court in Conference, this the 8th day of December, 2021.

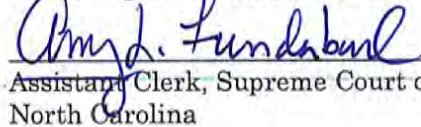


For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 8th day of December, 2021.



AMY L. FUNDERBURK
Clerk, Supreme Court of North Carolina



Assistant Clerk, Supreme Court of
North Carolina

Copy to:

North Carolina Court of Appeals

Mr. Narendra K. Ghosh, Attorney at Law, For Harper, Rebecca, et al. - (By Email)

Mr. Terence Steed, Assistant Attorney General, For State Board of Elections, et al. - (By Email)

Mr. Amar Majmundar, Senior Deputy Attorney General, For State Board of Elections, et al. - (By Email)

Ms. Stephanie A. Brennan, Special Deputy Attorney General, For State Board of Elections, et al. - (By Email)

Mr. Burton Craige, Attorney at Law, For Harper, Rebecca, et al. - (By Email)

Mr. Paul E. Smith, Attorney at Law, For Harper, Rebecca, et al. - (By Email)

Mr. Phillip J. Strach, Attorney at Law, For Hall, Destin, et al. - (By Email)

Ms. Alyssa Riggins, Attorney at Law, For Hall, Destin, et al. - (By Email)

Mr. John E. Branch, III, Attorney at Law, For Hall, Destin, et al. - (By Email)

Mr. Thomas A. Farr, Attorney at law, For Hall, Destin, et al. - (By Email)

Mr. Stephen D. Feldman, Attorney at Law, For N.C. League of Conservation Voters, Inc., et al. - (By Email)

Mr. Adam K. Doerr, Attorney at Law, For N.C. League of Conservation Voters, Inc., et al. - (By Email)

Mr. Erik R. Zimmerman, Attorney at Law, For N.C. League of Conservation Voters, Inc., et al. - (By Email)

Mr. Ryan Y. Park, Solicitor General, For Gov. Cooper and AG Stein - (By Email)

Mr. James W. Doggett, Deputy Solicitor General, For Gov. Cooper and AG Stein - (By Email)

Mr. Zachary W. Ezor, Solicitor General Fellow, For Gov. Cooper and AG Stein - (By Email)

-6-

Ms. Kellie Z. Myers, Trial Court Administrator - (By Email)
West Publishing - (By Email)
Lexis-Nexis - (By Email)

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

Docket No. 21 CVS 500085

REBECCA HARPER; AMY CLARE
OSEROFF; DONALD RUMPH; JOHN
ANTHONY BALLA; RICHARD R. CREWS;
LILY NICOLE QUICK; GETTYS COHEN
JR.; SHAWN RUSH; MARK S. PETERS;
KATHLEEN BARNES; VIRGINIA
WALTERS BRIEN; DAVID DWIGHT
BROWN; EILEEN STEPHENS; BARBARA
PROFFITT; MARY ELIZABETH VOSS;
CHENITA BARBER JOHNSON; SARAH
TABER; JOSHUA PERRY BROWN;
LAUREEN FLOOD; DONALD M.
MACKINNON; RON OSBORNE; ANN
BUTZNER; SONDRRA STEIN; BOBBY
JONES; KRISTIANN HERRING,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN
HIS OFFICIAL CAPACITY AS CHAIR
OF THE HOUSE STANDING
COMMITTEE ON REDISTRICTING;
SENATOR WARREN DANIEL, IN HIS
OFFICIAL CAPACITY AS CO-CHAIR OF
THE SENATE STANDING COMMITTEE
ON REDISTRICTING AND ELECTIONS;
SENATOR RALPH HISE, IN HIS
OFFICIAL CAPACITY AS CO-CHAIR OF
THE SENATE STANDING COMMITTEE
ON REDISTRICTING AND ELECTIONS;
SENATOR PAUL NEWTON, IN HIS
OFFICIAL CAPACITY AS CO-CHAIR OF
THE SENATE STANDING COMMITTEE
ON REDISTRICTING AND ELECTIONS;
SPEAKER OF THE NORTH CAROLINA
HOUSE OF REPRESENTATIVES

AMENDED COMPLAINT

(Three-Judge Court Pursuant to
N.C. Gen. Stat. § 1-267.1)

TIMOTHY K. MOORE; PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE PHILIP E. BERGER; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; STELLA ANDERSON, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; JEFF CARMON III, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; STACY EGGERS IV, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; TOMMY TUCKER, IN HIS OFFICIAL CAPACITY AS MEMBER OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendants.

Plaintiffs, complaining of Defendants, say and allege:

INTRODUCTION

1. Partisan gerrymandering, where partisan mapmakers manipulate district boundaries from behind a computer to maximize their own party’s advantage and guarantee the outcome of elections before anyone casts a ballot, is incompatible with “North Carolinians’ fundamental rights guaranteed by the North Carolina Constitution.” Order on Inj. Relief, *Harper v. Lewis*, No. 19-CVS-012667 (“*Harper I*”), at 15. It violates the Free Elections Clause’s guarantee that elections shall be “conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at 7 (citing *Common Cause v. Lewis*, 18-CVS-014001, 2019 WL 4569584, at *110 (N.C. Super. Ct. Sep. 3, 2019)). It “runs afoul of the North Carolina Constitution’s guarantee that no person shall be denied the equal protection of the laws.” *Id.* at 8 (citing *Common Cause*, 2019 WL 4569584, at *113). And it is irreconcilable with the “important guarantees in the North Carolina Constitution of the freedom of speech and the right of the people in our State to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.” *Id.* at 10-11 (citing *Common Cause*, 2019 WL 4569584, at *112).

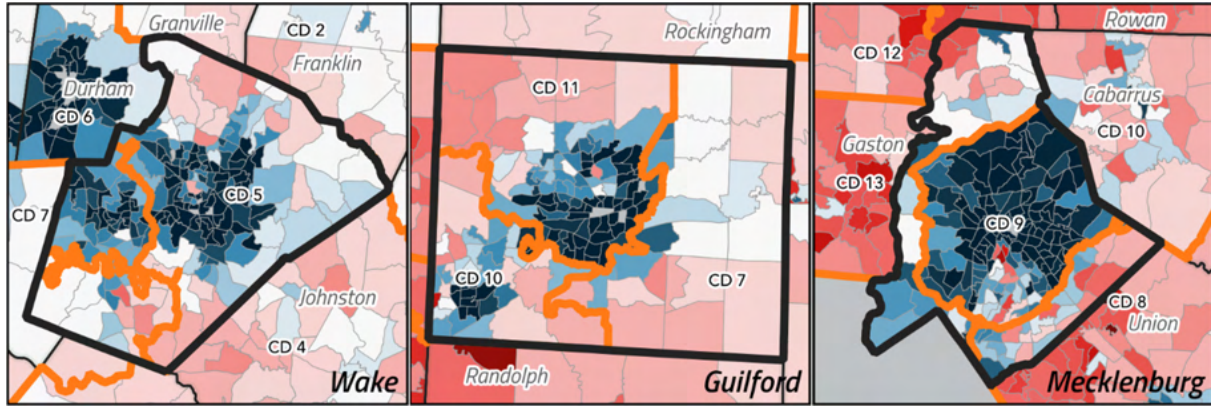
2. In 2019, two three-judge panels of this Court held that the North Carolina General Assembly unlawfully gerrymandered the state’s legislative and congressional maps. First, in *Common Cause*, the Court held following a bench trial that the legislative districts enacted by the General Assembly in 2017 were unconstitutional partisan gerrymanders. The Court concluded that “the 2017 Enacted Maps, as drawn, do not permit voters to freely choose their representatives, but rather representatives are choosing voters based upon sophisticated partisan sorting.” *Common Cause*, 2019 WL 4569584, at *3. The *Common Cause* Court accordingly held that the legislative maps violated the Free Elections Clause, Equal Protection Clause, and Free Speech and Assembly

Clauses of the North Carolina Constitution. *See id.*

3. Later that year, in *Harper I*, the Court held that many of the same Plaintiffs here were likely to prevail on the merits of their claims that North Carolina’s “2016 congressional districts are extreme partisan gerrymanders.” *Harper I*, slip op. at 14. Like in *Common Cause*, the *Harper I* Court held that the 2016 congressional districts violated the North Carolina Constitution’s Free Elections Clause, Equal Protection Clause, and Freedom of Speech and Assembly Clauses. *Id.* The Court enjoined the Legislative Defendants and State Board Defendants from administering the 2020 primary and general elections for Congress using these unconstitutional districts, which were intentionally designed to entrench a partisan advantage of 10 Republicans and 3 Democrats in this closely divided state. *Id.* at 13. It later directed that North Carolina’s 2020 congressional elections be conducted under a remedial map enacted just weeks before the December 2, 2019 candidate filing period. Order Lifting Inj., *Harper I*, at 1.

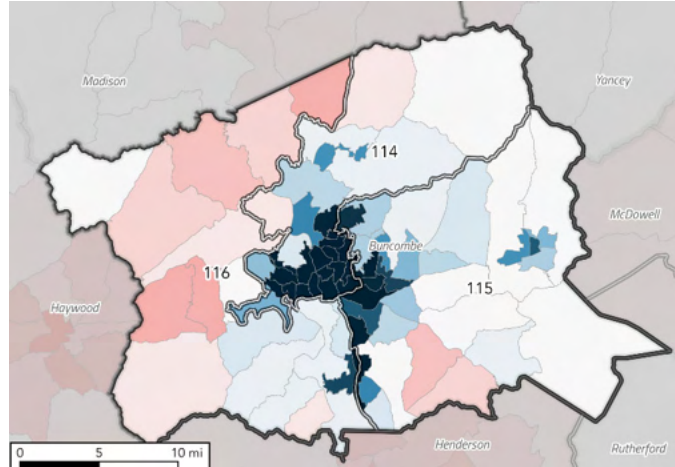
4. The General Assembly has once again abused its redistricting authority by enacting new maps for the House, Senate, and Congress (together, the “2021 Plans”) that intentionally entrench Republican majorities in virtually every plausible political environment. The 2021 Plans are intentional partisan gerrymanders that violate the North Carolina Constitution.

5. The 2021 Congressional Plan flagrantly dilutes Democratic votes in large part by trisecting each of the three most heavily Democratic counties in the state—Wake, Guilford, and Mecklenburg.



6. The 2021 Congressional Plan packs North Carolina’s Democratic strongholds in Raleigh, Durham and Cary and Apex combined, and Charlotte into three congressional districts. And it cracks the State’s remaining Democratic voters across the remaining districts to ensure an overwhelming majority of safe Republican seats. The result is as intended: A map that produces at least 10 Republican seats across nearly every plausible political environment—the same amount of seats that Legislative Defendants bragged was the most extreme gerrymander possible when they enacted the 2016 congressional map that was struck down in *Harper I*.

7. The 2021 House and Senate Plans fare no better. By meticulously packing and cracking Democratic voters in every corner of the State, including through their choice of county clusters in situations where the Whole County Rule left them with discretion, Legislative Defendants have entrenched majorities in the House and Senate in nearly every plausible political environment. Throughout both maps, the Legislative Defendants artificially create Republican districts by needlessly wasting Democratic votes, such as in the example below in which voters in heavily Democratic Buncombe County are packed into two House Districts (Districts 114 and 115) to give way to a Republican-leaning District (District 116) that would not otherwise exist. Other examples abound and are described in greater detail in this Amended Complaint.



8. As the *Harper I* and *Common Cause* Courts explained, extreme partisan gerrymandering entrenches politicians in power, evinces a fundamental distrust of voters by serving the self-interest of political parties over the public good, and dilutes and devalues the votes of some citizens compared to others. *Harper I*, slip op. at 7; *Common Cause*, 2019 WL 4569584, at *110. The 2021 Plans are intentional partisan gerrymanders that violate the fundamental rights of North Carolinians, just like their predecessors that were invalidated in *Harper I* and *Common Cause*. They should meet the same fate.

PARTIES

A. Plaintiffs

9. Plaintiff Amy Clare Oseroff is a retired teacher residing in Greenville, North Carolina. Ms. Oseroff’s residence is located within Congressional District 1, Senate District 5, and House District 8 under the 2021 Plans. The 2021 Plans unlawfully crack Democratic voters in Congressional District 1 and Senate District 5, and pack Democratic voters in House District 8. Ms. Oseroff is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Ms. Oseroff intends to vote in upcoming elections for the General Assembly and Congress.

10. Plaintiff Rebecca Harper is a real estate agent residing in Cary, North Carolina. Ms. Harper's residence is located within Congressional District 6, Senate District 17, and House District 21 under the 2021 Plans. The 2021 Plans unlawfully pack Democratic voters in Congressional District 6, and crack Democratic voters in Senate District 17 and House District 21. Ms. Harper is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Ms. Harper intends to vote in upcoming elections for the General Assembly and Congress.

11. Plaintiff Donald Rumph is an Army and Air Force combat veteran and retired registered nurse residing in Greenville, North Carolina. Mr. Rumph's residence is located within Congressional District 1, Senate District 5, and House District 9 under the 2021 Plans. The 2021 Plans unlawfully crack Democratic voters in Congressional District 1, Senate District 5, and House District 9. Mr. Rumph is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Mr. Rumph intends to vote in upcoming elections for the General Assembly and Congress.

12. Plaintiff John Anthony Balla is a digital marketing strategist residing in Raleigh, North Carolina. Mr. Balla's residence is located within Congressional District 5, Senate District 18, and House District 40 under the 2021 Plans. The 2021 Plans unlawfully pack Democratic voters in Congressional District 5 and Senate District 18. Mr. Balla is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Mr. Balla intends to vote in upcoming elections for the General Assembly and Congress.

13. Plaintiff Richard R. Crews is a retired stockbroker residing in Newland, North Carolina. Mr. Crews's residence is located within Congressional District 14, Senate District 47, and House District 85 under the 2021 Plans. The 2021 Plans unlawfully crack Democratic voters in Congressional District 14. Mr. Crews is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Mr. Crews intends to vote in upcoming elections for the General Assembly and Congress.

14. Plaintiff Lily Nicole Quick is a homemaker residing in Greensboro, North Carolina. Ms. Quick's residence is located within Congressional District 7, Senate District 28, and House District 59 under the 2021 Plans. The 2021 Plans unlawfully crack Democratic voters in Congressional District 7 and House District 59, and pack Democratic voters in Senate District 28. Ms. Quick is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Ms. Quick intends to vote in upcoming elections for the General Assembly and Congress.

15. Plaintiff Gettys Cohen Jr. is a dentist residing in Smithfield, North Carolina. Dr. Cohen's residence is located within Congressional District 4, Senate District 10, and House District 28 under the 2021 Plans. The 2021 Plans unlawfully crack Democratic voters in Congressional District 4 and House District 28. Dr. Cohen is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Dr. Cohen intends to vote in upcoming elections for the General Assembly and Congress.

16. Plaintiff Shawn Rush is part owner of a marketing firm, a Meals on Wheels

organizer, and Mayor Pro Tem of East Salisbury residing in East Spencer, North Carolina. His residence is located within Congressional District 10, Senate District 33, and House District 76 under the 2021 Plans. The 2021 Plans unlawfully crack Democratic voters in Congressional District 10, Senate District 33, and House District 76. Mr. Rush is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Mr. Rush intends to vote in upcoming elections for the General Assembly and Congress.

17. Plaintiff Mark S. Peters is a retired physician assistant residing in Fletcher, North Carolina. Mr. Peters's residence is located within Congressional District 14, Senate District 46, and House District 115 under the 2021 Plans. The 2021 Plans unlawfully crack Democratic voters in Congressional District 14 and Senate District 46, and pack Democratic voters in House District 115. Mr. Peters is registered as an unaffiliated voter and has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Mr. Peters intends to vote in upcoming elections for the General Assembly and Congress.

18. Plaintiff Kathleen Barnes is the owner of a small publishing company residing in Brevard, North Carolina. Ms. Barnes's residence is located within Congressional District 14, Senate District 50, and House District 119 under the 2021 Plans. The 2021 Plans crack Democratic voters in Congressional District 14. Ms. Barnes is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Ms. Barnes intends to vote in upcoming elections for the General Assembly and Congress.

19. Plaintiff Virginia Walters Brien is a sales manager residing in Charlotte, North

Carolina. Ms. Brien’s residence is located within Congressional District 9, Senate District 40, and House District 102 under the 2021 Plans. The 2021 Plans unlawfully pack Democratic voters in Congressional District 9, Senate District 40, and House District 102. Ms. Brien is a registered unaffiliated voter who has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Ms. Brien intends to vote in upcoming elections for the General Assembly and Congress.

20. Plaintiff David Dwight Brown is a retired computer systems analyst residing in Greensboro, North Carolina. Mr. Brown’s residence is located within Congressional District 11, Senate District 27, and House District 58 under the 2021 Plans. The 2021 Plans unlawfully crack Democratic voters in Congressional District 11, and pack Democratic voters in Senate District 27 and House District 58. Mr. Brown is a registered Democrat who has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Mr. Brown intends to vote in upcoming elections for the General Assembly and Congress.

21. Plaintiff Eileen Stephens is an independent consultant residing in Wilmington, North Carolina. Her residence is located within Congressional District 3, Senate District 7, and House District 18 under the 2021 Plans. The 2021 Plans unlawfully crack Democratic voters in Congressional District 3 and Senate District 7, and pack Democratic voters in House District 18. Ms. Stephens is a registered Democrat and has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Ms. Stephens intends to vote in upcoming elections for the General Assembly and Congress.

22. Plaintiff Barbara Proffitt resides in Matthews, North Carolina. Her residence is

located within Congressional District 8, Senate District 41, and House District 103 under the 2021 Plans. The 2021 Plans unlawfully crack Democratic voters in Congressional District 8, Senate District 41, and House District 103. Ms. Proffitt is a registered Democrat and has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Ms. Proffitt intends to vote in upcoming elections for the General Assembly and Congress.

23. Plaintiff Mary Elizabeth Voss resides in Huntersville, North Carolina. Her residence is located within Congressional District 13, Senate District 38, and House District 101 under the 2021 Plans. The 2021 Plans unlawfully crack Democratic voters in Congressional District 13, and pack Democratic voters in Senate District 38 and House District 101. Ms. Voss is a registered Democrat and has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Ms. Voss intends to vote in upcoming elections for the General Assembly and Congress.

24. Plaintiff Chenita Barber Johnson is an education advocate and co-founder of the Coalition for Equity in Public Education, and resides in Winston-Salem, North Carolina. Her residence is located within Congressional District 12, Senate District 32, and House District 72 under the 2021 Plans. The 2021 Plans unlawfully crack Democratic voters in Congressional District 12, and pack Democratic voters in Senate District 32 and House District 72. Ms. Johnson is a registered Democrat and has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Ms. Johnson intends to vote in upcoming elections for the General Assembly and Congress.

25. Plaintiff Sarah Taber is an agricultural consultant and writer residing in Fayetteville, North Carolina. Her residence is located within Congressional District 4, Senate

District 19, and House District 43 under the 2021 Plans. The 2021 Plans unlawfully crack Democratic voters in Congressional District 4 and House District 43, and pack Democratic voters in Senate District 19. Ms. Taber is a registered Democrat and has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Ms. Taber intends to vote in upcoming elections for the General Assembly and Congress.

26. Plaintiff Joshua Perry Brown is a student residing in High Point, North Carolina. His residence is located within Congressional District 10, Senate District 27, and House District 60 under the 2021 Plans. The 2021 Plans unlawfully crack Democratic voters in Congressional District 10, and pack Democratic voters in Senate District 27 and House District 60. Mr. Brown is a registered Democrat and has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Mr. Brown intends to vote in upcoming elections for the General Assembly and Congress.

27. Plaintiff Laureen Flood is a retired customer service representative residing in Woodland, North Carolina. Her residence is located within Congressional District 2, Senate District 1, and House District 27 under the 2021 Plans. The 2021 Plans unlawfully crack Democratic voters in Congressional District 2 and Senate District 1, and pack Democratic voters in House District 27. Ms. Flood is a registered Democrat and has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Ms. Flood intends to vote in upcoming elections for the General Assembly and Congress.

28. Plaintiff Donald M. MacKinnon is a retired financial professional residing in High Point, North Carolina. His residence is located within Congressional District 10, Senate District

27, and House District 62 under the 2021 Plans. The 2021 Plans unlawfully crack Democratic voters in Congressional District 10 and House District 62, and pack Democratic voters in Senate District 27. Mr. MacKinnon is a registered Democrat and has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Mr. MacKinnon intends to vote in upcoming elections for the General Assembly and Congress.

29. Plaintiff Ron Osborne is Executive Director of Residential Treatment Services of Alamance, Inc., and resides in Graham, North Carolina. His residence is located within Congressional District 7, Senate District 25, and House District 64 under the 2021 Plans. The 2021 Plans unlawfully crack Democratic voters in Congressional District 7 and House District 64. Mr. Osborne is a registered Democrat and has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Mr. Osborne intends to vote in upcoming elections for the General Assembly and Congress.

30. Plaintiff Ann Butzner is a retired nurse and an advocate for senior citizens, and resides in Asheville, North Carolina. Her residence is located within Congressional District 14, Senate District 49, and House District 115 under the 2021 Plans. The 2021 Plans unlawfully crack Democratic voters in Congressional District 14, and pack Democratic voters in Senate District 49 and House District 115. Ms. Butzner is a registered Democrat and has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Ms. Butzner intends to vote in upcoming elections for the General Assembly and Congress.

31. Plaintiff Sondra Stein is a retired education policymaker residing in Durham, North

Carolina. Her residence is located within Congressional District 6, Senate District 22, and House District 2 under the 2021 Plans. The 2021 Plans unlawfully pack Democratic voters in Congressional District 6 and Senate District 22, and crack Democratic voters in House District 2. Ms. Stein is a registered Democrat and has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Ms. Stein intends to vote in upcoming elections for the General Assembly and Congress.

32. Plaintiff Bobby Jones is a retired state employee and community organizer residing in Goldsboro, North Carolina. His residence is located within Congressional District 2, Senate District 4, and House District 10 under the 2021 Plans. The 2021 Plans unlawfully crack Democratic voters in Congressional District 2 and House District 10. Mr. Jones is a registered Democrat and has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Mr. Jones intends to vote in upcoming elections for the General Assembly and Congress.

33. Plaintiff Kristiann Herring is a social worker residing in Goldsboro, North Carolina. Her residence is located within Congressional District 2, Senate District 4, and House District 10 under the 2021 Plans. The 2021 Plans unlawfully crack Democratic voters in Congressional District 2 and House District 10. Ms. Herring is a registered Democrat and has consistently voted for Democratic candidates for the U.S. House of Representatives, North Carolina Senate, and North Carolina House of Representatives. Ms. Herring intends to vote in upcoming elections for the General Assembly and Congress.

B. Defendants

34. Defendant Destin Hall is a member of the North Carolina House of Representatives and currently serves as the Chair of the House Standing Committee on Redistricting. Mr. Hall is

sued in his official capacity only.

35. Defendant Warren Daniel is a member of the North Carolina Senate and currently serves as a co-Chair of the Senate Standing Committee on Redistricting and Elections. Mr. Daniel is sued in his official capacity only.

36. Defendant Ralph E. Hise, Jr. is a member of the North Carolina Senate and currently serves as a co-Chair of the Senate Standing Committee on Redistricting and Elections. Mr. Hise is sued in his official capacity only.

37. Defendant Paul Newton is a member of the North Carolina Senate and currently serves as a co-Chair of the Senate Standing Committee on Redistricting and Elections. Mr. Newton is sued in his official capacity only.

38. Defendant Timothy K. Moore is the Speaker of the North Carolina House of Representatives. Mr. Moore is sued in his official capacity only.

39. Defendant Philip E. Berger is the President Pro Tempore of the North Carolina Senate. Mr. Berger is sued in his official capacity only.

40. Defendant North Carolina State Board of Elections is an agency responsible for the regulation and administration of elections in North Carolina.

41. Defendant Damon Circosta is the Chair of the North Carolina State Board of Elections. Mr. Circosta is sued in his official capacity only.

42. Defendant Stella Anderson is the Secretary of the North Carolina State Board of Elections. Ms. Anderson is sued in her official capacity only.

43. Defendant Jeff Carmon III is a member of the North Carolina State Board of Elections. Mr. Carmon is sued in his official capacity only.

44. Defendant Stacy Eggers IV is a member of the North Carolina State Board of

Elections. Mr. Eggers is sued in his official capacity only.

45. Defendant Tommy Tucker is a member of the North Carolina State Board of Elections. Mr. Tucker is sued in his official capacity only.

JURISDICTION AND VENUE

46. This Court has jurisdiction of this action pursuant to Articles 26 and 26A of Chapter 1 of the General Statutes.

47. Under N.C. Gen. Stat. § 1-81.1, the exclusive venue for this action is the Wake County Superior Court.

48. Under N.C. Gen. Stat. § 1-267.1, a three-judge court must be convened because this action challenges the validity of a redistricting plan enacted by the General Assembly.

FACTUAL ALLEGATIONS

A. North Carolina voters are divided politically.

49. For more than a decade, North Carolina’s voters have been closely divided between the Republican and Democratic Parties. Democrats have won three out of four gubernatorial elections since 2008 while Republican presidential and U.S. Senate candidates have each won the state three out of four times, nearly all in close races.

50. The most recent election cycle illustrates just how evenly divided this state is. In 2020, the Republican nominee for President narrowly defeated the Democratic nominee by a margin of 49.9% to 48.6%. The gubernatorial race was also close, with the Democratic nominee defeating the Republican nominee by a margin of 51.5% to 47.0%. And the race for Attorney General was closer still: the Democratic nominee defeated the Republican nominee by a margin of 50.1% to 49.9%. These razor-thin margins in statewide races reflect what everyone familiar with North Carolina knows—this is a closely divided state.

51. Nevertheless, due to consistent, systematic, and egregious gerrymandering by the

Republican-controlled General Assembly, the popular will has not been reflected in the state’s congressional delegation or in the General Assembly for over a decade.

B. National Republican party officials target North Carolina for partisan gerrymandering prior to the 2010 elections.

52. In the years leading up to the 2010 decennial census, national Republican leaders undertook a sophisticated and concerted effort to gain control of state governments in 13 critical swing states such as North Carolina. The Republican State Leadership Committee (RSLC) code-named the plan “the REDistricting Majority Project” or “REDMAP.” REDMAP’s goal was to “control[] the redistricting process in . . . states [that] would have the greatest impact on determining how both state legislative and congressional district boundaries would be drawn” after the 2010 census. The RSLC’s REDMAP website explained that fixing these district lines in favor of Republicans would “solidify conservative policymaking at the state level and maintain a Republican stronghold in the U.S. House of Representatives for the next decade.”

53. North Carolina was a key REDMAP “target state.” REDMAP aimed to flip both chambers of the North Carolina General Assembly from Democratic to Republican control.

54. To spearhead its efforts in North Carolina, the RSLC enlisted the most influential conservative donor in North Carolina, Art Pope. Together, the RSLC and Pope targeted 22 races in the North Carolina House and Senate. Pope helped create a new non-profit organization called “Real Jobs NC” to finance spending on the races, and the RSLC donated \$1.25 million to this new group. Pope himself made significant contributions; in total, Pope, his family, and groups backed by him spent \$2.2 million on the 22 targeted races. This represented three-quarters of the total spending by all independent groups in North Carolina on the 2010 state legislative races.

55. The money was well spent. Republicans won 18 of the 22 races the RSLC targeted, giving Republicans control of both the House and Senate for the first time since 1870.

C. Republican mapmakers create the 2011 congressional and legislative plans from party headquarters with the intent to advantage Republicans and disadvantage Democrats.

56. Following the 2010 election, the House and Senate each established redistricting committees that were jointly responsible for preparing congressional and legislative redistricting plans (the “2011 Plans”).

57. The House and Senate Redistricting Committees engaged Dr. Thomas Hofeller, who also served on a REDMAP redistricting team, to draw both sets of plans. Dr. Hofeller and his team drew the 2011 Plans at the North Carolina Republican Party headquarters in Raleigh using mapmaking software licensed by the North Carolina Republican Party.

58. Legislative Defendants did not make Dr. Hofeller available to Democratic members of the General Assembly during the 2011 redistricting process, nor did Dr. Hofeller communicate with any Democratic members in developing the 2011 Plans.

59. Although Republicans drew their maps in secret, their intentions were clear as day. Their goal was to maximize the number of seats Republicans would win in Congress and the General Assembly through whatever means necessary. Dr. Hofeller later testified that the Committee Chairs instructed him to “create as many [congressional] districts as possible in which GOP candidates would be able to successfully compete for office.” Deposition of Thomas Hofeller (“Hofeller Dep.”) at 123:2-23 (Jan. 24, 2017). And Republican leaders similarly admitted in court filings that “political considerations played a significant role in the enacted [2011 legislative] plans,” and that the plans were “designed to ensure Republican majorities in the House and Senate.” *Dickson v. Rucho*, No. 201PA12-3, 2015 WL 4456364, at *16, 55 (N.C. July 13, 2015).

D. Federal courts strike down the 2011 congressional and legislative plans as illegal racial gerrymanders.

60. The 2011 Plans were challenged and invalidated as unlawful racial gerrymanders.

In *Covington v. North Carolina*, No. 1:15-CV-00399 (M.D.N.C.), the plaintiffs challenged 19 districts in the North Carolina House (5, 7, 12, 21, 24, 29, 31, 32, 33, 38, 42, 43, 48, 57, 58, 60, 99, 102, and 107) and 9 districts in the North Carolina Senate (4, 5, 14, 20, 21, 28, 32, 38, and 40). They alleged that race predominated in the drawing of these districts, in violation of the federal Equal Protection Clause. In August 2016, the federal district court found for the plaintiffs as to all of the challenged districts. *Covington v. North Carolina*, 316 F.R.D. 176, 176-78 (M.D.N.C. 2016), *aff'd*, 137 S. Ct. 2211 (2017). And on February 5, 2016, a three-judge federal district court struck down the 2011 congressional plan as racially gerrymandered in violation of the Fourteenth Amendment's Equal Protection Clause. *See Harris v. McCrory*, 159 F. Supp. 3d 600 (M.D.N.C. 2016).

E. The General Assembly illegally gerrymanders the remedial congressional and legislative plans.

61. The General Assembly proceeded to draw remedial congressional and legislative maps. Republicans held supermajority control of both chambers of the North Carolina General Assembly at that time and thus had the power to draw the new plans unilaterally.

62. Legislative Defendants once again engaged Dr. Hofeller to draw the remedial plans. On February 9, 2016, in a meeting at Dr. Hofeller's home, Representative Lewis and Senator Rucho gave Dr. Hofeller oral instructions regarding the criteria he should use in drawing the remedial congressional plan, directing him to use political data to create the new districts. This political data included precinct-level election results from all statewide elections, excluding presidential elections, dating back to January 1, 2008. Representative Lewis and Senator Rucho specifically instructed Dr. Hofeller to use this partisanship data to draw a map that would ensure 10 Republican seats and 3 Democratic seats. *See* Deposition of Representative David Lewis ("Lewis Dep.") at 162:24-163:7, 166:13-169:1 (Jan. 26, 2017); Hofeller Dep. at 175:19-23,

178:14-20, 188:19-190:2.

63. On February 12, 2016, after the 2016 congressional plan was already nearly finished, the Republican leadership of the General Assembly appointed Representative Lewis and Senator Rucho as co-chairs of the newly formed Joint Select Committee on Redistricting (the “Joint Committee”). The Joint Committee consisted of 25 Republicans and 12 Democrats.

64. The Joint Committee held a public hearing on February 15, 2016. But because Dr. Hofeller finished drawing the 2016 congressional plan before the hearing took place, the final plan did not reflect any public input.

65. At a meeting on February 16, 2016, the Joint Committee adopted a set of criteria (the “2016 Adopted Criteria”) to govern the creation of the 2016 congressional plan.

66. The Joint Committee adopted “Partisan Advantage” as one official criterion. This criterion required the new plan to preserve Republicans’ existing 10-3 advantage in North Carolina’s congressional delegation. The criterion read as follows:

Partisan Advantage: 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.

67. In explaining this Partisan Advantage criterion, Representative Lewis proposed that the Committee “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.” Joint Comm. Session, Feb. 16, 2016, at 50:6-10.

68. Representative Lewis “acknowledge[d] freely that this would be a political gerrymander.” *Id.* at 48:4-5.

69. The Joint Committee adopted “Political Data” as another criterion, which stated:

Political Data: 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. Data identifying the race of individuals or voters shall not be used in the construction or consideration of districts in the 2016 Contingent Congressional Plan. Voting districts (“VTDs”) should be split only when necessary to comply with the zero deviation population requirements set forth above in order to ensure the integrity of political data.

70. Representative Lewis left no doubt as to how this political data would be used, telling the Joint Committee members he “want[ed] to make clear that to the extent [we] are going to use political data in drawing this map, it is to gain partisan advantage on the map. I want that criteria to be clearly stated and understood.” Joint Comm. Session, Feb. 16, 2016, at 53:24-54:4.

71. The remaining criteria adopted by the Joint Committee were to provide for equal population, to make the districts contiguous, to eliminate the then-current configuration of District 12, to improve the compactness of the existing districts, to keep more counties and VTDs whole than the existing districts, and to avoid pairing incumbents.

72. The North Carolina House and Senate approved the 2016 congressional plan on February 18 and February 19, 2016, respectively. No Democrat in either chamber voted for the 2016 congressional plan.

73. In sworn testimony, Senator Rucho confirmed that the 2016 congressional plan “satisfied” “all criteria,” including the criteria requiring a 10-3 partisan advantage for Republicans. Deposition of Senator Robert A. Rucho (“Rucho Dep.”) 193:24-194:14 (Jan. 25, 2017).

74. The 2016 congressional plan achieved precisely its intended partisan effects—a guaranteed 10-3 Republican advantage in North Carolina’s congressional delegation. In the 2016 elections, Democratic congressional candidates in North Carolina won a combined 47% of the statewide vote, and yet won only 3 of 13 seats (23%). The results were even more striking in 2018. Democrats won a majority of the statewide vote (50.9%, when adjusting for one uncontested race in which Democrats did not field a candidate) but carried only 3 of the 13 seats (23%).

75. The General Assembly gerrymandered the remedial state legislative maps the following year in strikingly similar fashion.

76. The General Assembly began developing new House and Senate plans in June 2017. At a July 26, 2017 joint meeting of the House and Senate Redistricting Committees, Representative Lewis and Senator Hise disclosed that Republican leadership would again employ Dr. Hofeller to draw the new House and Senate plans. When Democratic Senator Terry Van Duyn asked whether Hofeller would “be available to Democrats and maybe even the Black Caucus to consult,” Representative Lewis answered “no.” Joint Comm. Hr’g, July 26, 2017, at 22-23.

77. At another joint meeting on August 10, 2017, the House and Senate Redistricting Committees voted on criteria to purportedly govern the new plans.

78. Representative Lewis proposed as one criterion: “election data[:] political consideration and election results data may be used in drawing up legislative districts in the 2017 House and Senate plans.” Joint Comm. Hr’g, Aug. 10, 2017, at 132. Representative Lewis provided no further explanation or justification for this criterion in introducing it, stating only: “I believe this is pretty self-explanatory, and I would urge members to adopt the criteria.” *Id.*

79. The House and Senate Committees adopted the “election data” criterion on a party-line vote. *Id.* at 141-48. No Democrat on the Committees voted for the criterion, but all 32 Republican members of the Committees did. *Id.*

80. Senator Clark proposed an amendment that would prohibit the General Assembly from seeking to maintain or establish a partisan advantage for any party in redrawing the plans. *Id.* at 166-67. Representative Lewis opposed the amendment without explanation, stating only that he “would not advocate for [its] passage.” *Id.* at 167. The Committees rejected Senator Clark’s proposal on a straight party-line vote. *Id.* at 168-74.

81. On August 24, 2017, on a straight party-line vote, the Senate Redistricting Committee adopted the Senate map crafted by Hofeller without modification. The next day, the House Redistricting Committee adopted Hofeller’s proposed House plan without modification, also on a straight party-line vote.

82. On August 31, 2017, the General Assembly passed the House plan (designated HB 927) and the Senate plan (designated SB 691), with a few minor modifications from the versions passed by the Committees. No Democratic Senator voted in favor of either plan. The sole Democratic member of the House who voted for the plans was Representative William Brisson, who switched to become a Republican several months later.

83. The 2017 state legislative plans achieved their intended partisan effects. In the 2018 Senate elections, Democratic candidates won 50.5% of the two-party statewide vote, but only 21 of 50 seats (42%). And in the 2018 House elections, Democratic candidates won 51.2% of the two-party statewide vote, but only 55 of 120 seats (46%).

F. Three-judge panels of this Court enjoin the remedial congressional and legislative plans as unlawful partisan gerrymanders.

84. Both sets of remedial plans were challenged and invalidated as illegal partisan gerrymanders by three-judge panels of this Court.

85. On November 13, 2018, Common Cause, the North Carolina Democratic Party, and a group of North Carolina voters filed a lawsuit on November 13, 2018 alleging that the 2017 legislative plans violated the North Carolina Constitution’s Free Elections Clause, Equal Protection Clause, and Freedom of Speech and Freedom of Assembly Clauses.

86. A three-judge panel of this Court struck down the maps as unconstitutional on September 3, 2019. *Common Cause*, 2019 WL 4569584, at *2-3. The Court held that the Free Elections Clause “guarantees that all elections must be conducted freely and honestly to ascertain,

fairly and truthfully, the will of the People,” and that “this is a fundamental right of North Carolina citizens, a compelling governmental interest, and a cornerstone of our democratic form of government.” *Id.* at *2.

87. The *Common Cause* Court then held that its “understanding of the Free Elections Clause shape[d] the application of the Equal Protection Clause, Freedom of Speech Clause, and the Freedom of Assembly Clause.” *Id.* at *3 (citations omitted). The Court held that “[i]n the context of the constitutional guarantee that elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people, these clauses provide significant constraints against governmental conduct that disfavors certain groups of voters or creates barriers to the free ascertainment and expression of the will of the People.” *Id.*

88. The *Common Cause* Court then ordered the General Assembly to redraw the maps. On October 28, 2019, the court approved the remedial maps drawn by the General Assembly.

89. The 2016 remedial congressional plan met a similar fate. Many of the same Plaintiffs here filed a lawsuit on September 27, 2019, alleging that the 2016 congressional plan was an extreme partisan gerrymander that violated North Carolina’s Free Elections Clause, Equal Protection Clause, and Free Speech and Assembly Clauses. *See* Compl., *Harper I*, No. 19-CVS-012667. In *Harper I*, Plaintiffs alleged that the 2016 Plan “reflect[ed] an extreme and intentional effort to maximize Republican advantage.” *Id.* ¶ 2.

90. Plaintiffs moved for a preliminary injunction, arguing that they would suffer irreparable harm if they were forced to vote in the 2020 primary and general elections in egregiously gerrymandered congressional districts. The Court agreed and granted the motion for a preliminary injunction on October 28, 2019. *Harper I*, slip op. at 15.

91. The preliminary injunction ruling resolved two threshold jurisdictional questions:

First, the Court rejected Legislative Defendants’ contention that Plaintiffs’ claims presented non-justiciable political questions, holding that “partisan gerrymandering claims specifically present justiciable issues.” *Id.* at 3. Second, the Court rejected Legislative Defendants’ contention that Plaintiffs lacked standing to challenge the 2016 congressional plan. The Court held that Plaintiffs had standing to challenge the plan because they “have shown a likelihood of ‘a personal stake in the outcome of the controversy’ and a likelihood that the 2016 congressional districts cause them to ‘suffer harm.’” *Id.* at 5 (quoting *Goldston v. State*, 361 N.C. 26, 35, 637 S.E.2d 876, 882 (2006); *Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640, 642, 669 S.E.2d 279, 281 (2008)).

92. On the merits, the Court reaffirmed its holding in *Common Cause v. Lewis*, 18-CVS-14001, that extreme partisan gerrymandering violates multiple provisions of the North Carolina Constitution. It violates the Free Elections Clause by preventing elections from being “conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at 7. It violates the Equal Protection Clause by “treat[ing] individuals who support candidates of one political party less favorably than individuals who support candidates of another party.” *Id.* at 8. And it violates the Freedom of Speech and Freedom of Assembly Clauses by diluting the votes of “certain disfavored speakers (e.g., Democratic voters) because of disagreement with the views they express when they vote.” *Id.* at 10.

93. On October 30, 2019, Speaker Moore announced the creation of a joint House and Senate Select Committee to draw a remedial plan. The full House and Senate passed the remedial plan, this one an 8-5 partisan gerrymander, on straight party-line votes on November 14 and 15, 2019.

94. Legislative Defendants moved for summary judgment in *Harper I* on November 15, arguing that the case was moot and that Plaintiffs must file a new lawsuit to challenge the 2019

congressional plan. The Court *sua sponte* proceeded to enjoin the filing period for the 2020 congressional primary elections pending review of the remedial map. Order Enjoining Filing Period, *Harper I*, at 1-2.

95. At a hearing on Legislative Defendants’ motion for summary judgment, the Court explained that it had not determined whether the 2019 Plan was constitutional and that it “d[id] not reach th[e] issue” of “whether this action is moot.” *See* Ex. A, at 6. The Court observed that “although one can certainly argue that the process” leading to the enactment of the 2019 Plan “was flawed or that the result is far from ideal,” the “net result” was that the “grievously flawed 2016 congressional map has been replaced.” *Id.* at 7. The Court accordingly determined that it would not invoke its equitable authority to further delay the election. *Id.* at 8. And it expressed “fervent hope that the past 90 days” since the filing of the original complaint in this case would become “a foundation for future redistricting in North Carolina and that future maps are crafted through a process worthy of public confidence and a process that yields elections that are conducted freely and honestly to ascertain fairly and truthfully the will of the people.” *Id.* at 9.

96. The Court subsequently lifted its injunction of the filing period, but did not conduct any further proceedings or hold that the 2019 congressional plan was constitutional.

G. Legislative Defendants create the 2021 Plans with the goal of entrenching an overwhelming Republican advantage in congressional and legislative seats.

97. In flagrant disregard of the *Harper I* Court’s directive that the General Assembly enact maps that “yield[] elections that are conducted freely and honestly to ascertain fairly and truthfully the will of the people,” Ex. A, at 9, Legislative Defendants once again abused their authority over decennial redistricting to gerrymander North Carolina’s congressional and legislative maps.

98. The U.S. Census Bureau released data for states to begin redistricting efforts on

August 12, 2021, about five months later than usual due to delays attributable to the COVID-19 pandemic. North Carolina gained a congressional seat following the 2020 census after seeing its population grow by 9.5% over the previous decade. Several of the most populous counties in the state have grown even more rapidly over the same period: Wake County grew by 22.6%, Mecklenburg County by 20.3% Durham County by 18.4%, and Guilford by 9.7%. North Carolina’s new congressional map accordingly contains 14 congressional districts.

99. The General Assembly established two committees to oversee congressional and legislative redistricting: the House Committee on Redistricting and the Senate Committee on Redistricting and Elections. Each Committee was tasked with considering and proposing maps for its own chamber and for Congress.

100. Also on August 12, the House Committee on Redistricting and the Senate Committee on Redistricting and Elections adopted criteria to guide the enactment of new maps. While the adopted criteria provide that “[p]artisan considerations and election results data *shall not* be used in the drawing of districts in the 2021 Congressional, House, and Senate plans,” they freely permitted the use of “local knowledge of the character of communities and connections between communities,” as well as “[m]ember residence.”¹ Unlike the 2016 adopted criteria, which provided that “[r]easonable efforts shall be made not to divide a county into more than two districts,” the 2021 criteria did not counsel against splitting counties more than twice. The adopted criteria were otherwise materially identical to those used in drawing the 2016 congressional plan.

101. Over the next two months, Legislative Defendants undertook an opaque and constricted redistricting process that flagrantly flouted the prohibition on partisan considerations.

¹ House Committee on Redistricting & Senate Committee on Redistricting and Elections, Criteria Adopted by the Committees (Aug. 12, 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-12-2021/Criteria.adopted.8.12.pdf>.

102. Legislative Defendants gave little notice to North Carolinians on the schedule for public hearings to discuss the redistricting process. The House and Senate redistricting committees waited until September 1 to announce initial public hearings that would be held from September 8 through September 30. And the number of hearing sites made available was a small fraction of those held during the 2010 redistricting cycle.

103. Worse, Legislative Defendants held public hearings in smaller Republican counties while carefully avoiding Democratic strongholds, including Guilford County which the 2021 Congressional plan splits into three congressional districts. Legislative Defendants also held hearings at far fewer sites compared to the previous cycle: While the House and Senate Committees held public hearings on the redistricting process at 64 different sites in 2011, they held hearings at only 13 sites in 2021. Legislative Defendants offered no options to participate virtually.

104. Legislative Defendants also largely ignored public testimony submitted during these hearings. For example, residents in the Sandhills overwhelmingly asked that their communities be united in one congressional district centered in Cumberland County. But the 2021 Congressional plan entirely disregards this request by dividing the Sandhills communities among three different congressional districts, diluting their influence and further inhibiting the ability to coalesce around preferred candidates.

105. While the House and Senate Committees scheduled additional public hearings on October 25 and 26 regarding the proposed maps, they provided only a few days' notice and allowed only 210 North Carolinians to attend. Each attendee, moreover, was given only two minutes to speak.

106. On October 6, legislators began drawing potential maps for consideration by the House and Senate Committees. This map-drawing process, however, entirely ignored the

prohibition on partisan data.

107. The House and Senate Committees set up rooms where legislators could draw and submit maps on computers with the assistance of legislative staff. But while Legislative Defendants prohibited partisan data from being uploaded onto these computers, they did not restrict legislators from bringing maps or other instructive materials into the room that had been drawn using partisan data and copying those maps onto the computer.

108. When confronted with this obvious loophole that allowed the submission of maps using partisan data, Legislative Defendants asserted in committee meetings that they had no interest in preventing it—ensuring that the House and Senate Committees would receive maps drawn in violation of the adopted criteria.

109. Thus, although the adopted criteria nominally forbade use of partisan data, the 2021 Plan was in fact drawn based on maps that incorporated that very data.

110. The 2021 Congressional Plan was voted out of the Senate Committee as Senate Bill 740 on November 1. It was then voted out of the House Committee on November 3.

111. The full Senate and House passed the 2021 Congressional Plan on November 2 and November 4, respectively. The 2021 Congressional plan passed on strict party-line votes.

112. The 2021 House Plan was voted out of the House Committee on November 1. The General Assembly enacted the 2021 House Plan, on party-line votes, on November 4.

113. The 2021 Senate Plan was voted out of the Senate Committee on November 2. The General Assembly enacted the 2021 Senate Plan, on party-line votes, on November 4.

H. The 2021 Congressional plan packs and cracks Democratic voters in every district.

114. Unsurprisingly, this process resulted in the General Assembly intentionally enacting another extreme partisan gerrymander. Like the 2016 Congressional Plan, the 2021

Congressional Plan meticulously packs and cracks Democratic voters in every district—without exception.

115. The 2021 Congressional Plan trisects each of the three largest Democratic counties in the state—Wake, Guilford, and Mecklenburg.

116. And the 2021 Congressional Plan packs Democratic strongholds throughout the state into a handful of districts. The upshot is a map that results in 10 safe Republican seats, 3 safe Democratic seats, and 1 competitive seat—a nearly identical result to the 2016 Plan that produced a 10-3 Republican map in this evenly divided state.

117. As with the 2016 Congressional Plan, expert analysis confirms that the 2021 Congressional Plan is an intentional, extreme partisan gerrymander that dilutes Democratic votes and prevents Democratic voters from electing candidates of their choice. Dr. Jowei Chen, a professor of political science at the University of Michigan, generated hundreds of nonpartisan simulated maps respecting North Carolina’s political geography and traditional redistricting principles including equal population, contiguity and compactness, and avoiding splitting counties and VTDs. Dr. Chen found that the 2021 Congressional Plan was extraordinarily anomalous and heavily gerrymandered.

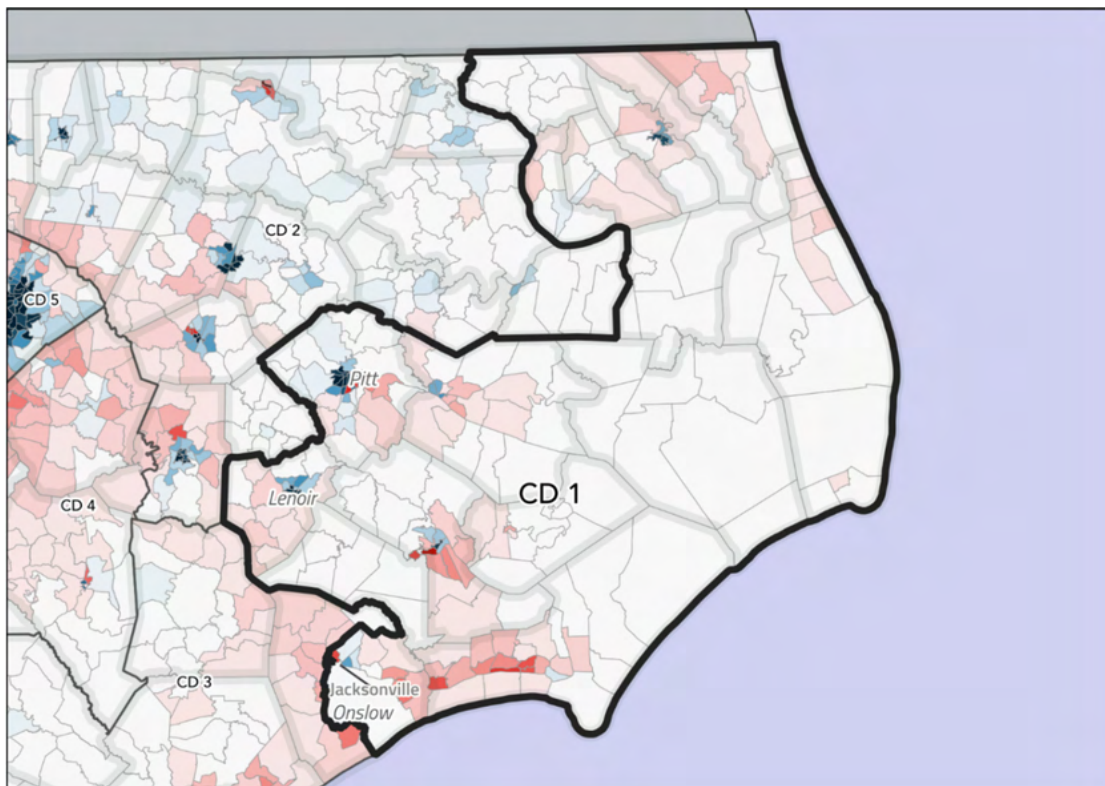
118. The sections below describe some of the most egregious examples of packing and cracking in each district.

Congressional District 1

119. Similar to District 3 in the 2016 Congressional Plan, Legislative Defendants drew District 1 to be a safe Republican seat while undermining Democratic voting strength in the neighboring District 2—the predecessor of which was a Democratic-leaning seat represented by Congressman G.K. Butterfield. District 1 receives nearly all of Pitt County’s Democratic VTDs

from Congressman Butterfield’s former district (District 1 in the 2019 Congressional Plan), including the entire city of Greenville.

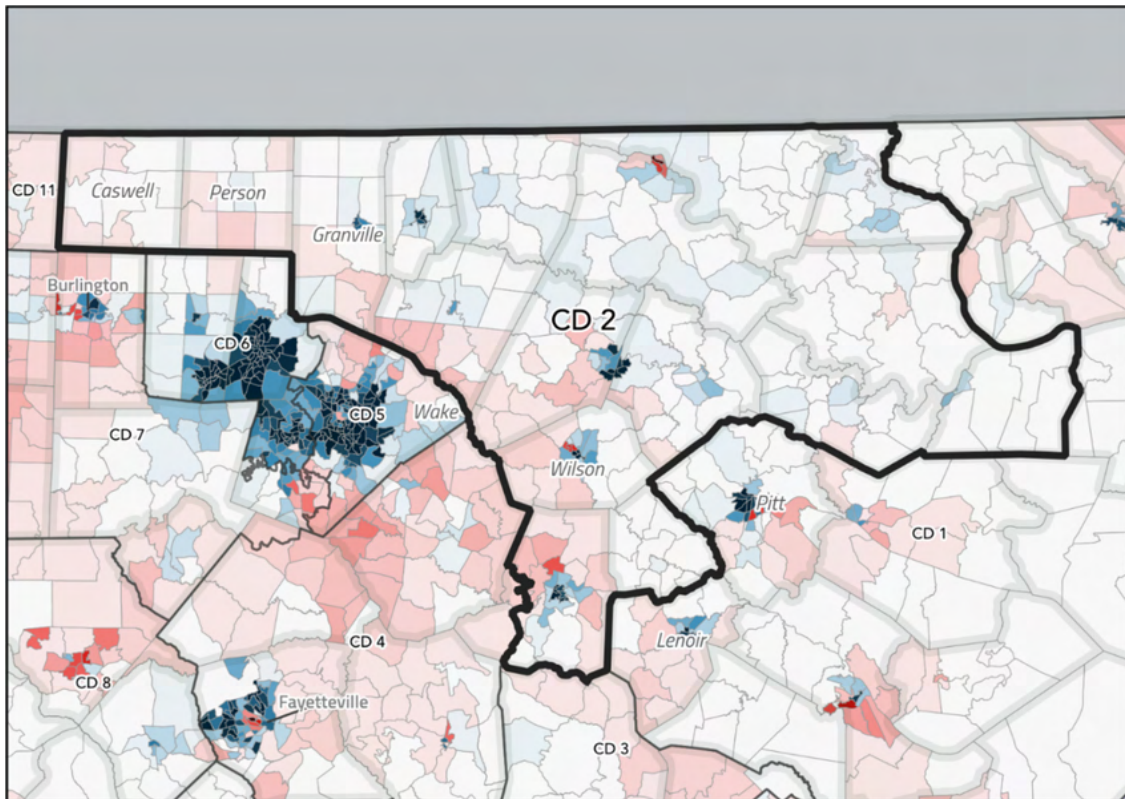
120. The following image (and others below) shows the district’s boundaries and the partisanship of its VTDs using a composite of the results of the 2020 North Carolina Attorney General and 2020 North Carolina Labor Commissioner races, with darker blue shading for the VTDs that voted more heavily Democratic, darker red for VTDs that voted more heavily Republican, and lighter shading for VTDs that were closer to a tie—with the shading adjusted for the VTD’s population.



121. The upshot of Legislative Defendants’ engineering is a safe Republican seat where Democratic voters have no meaningful chance of electing the candidate of their choice. In the 2020 presidential election, for example, Democratic candidate Joe Biden won only 43.2% of the vote in the new District 1.

Congressional District 2

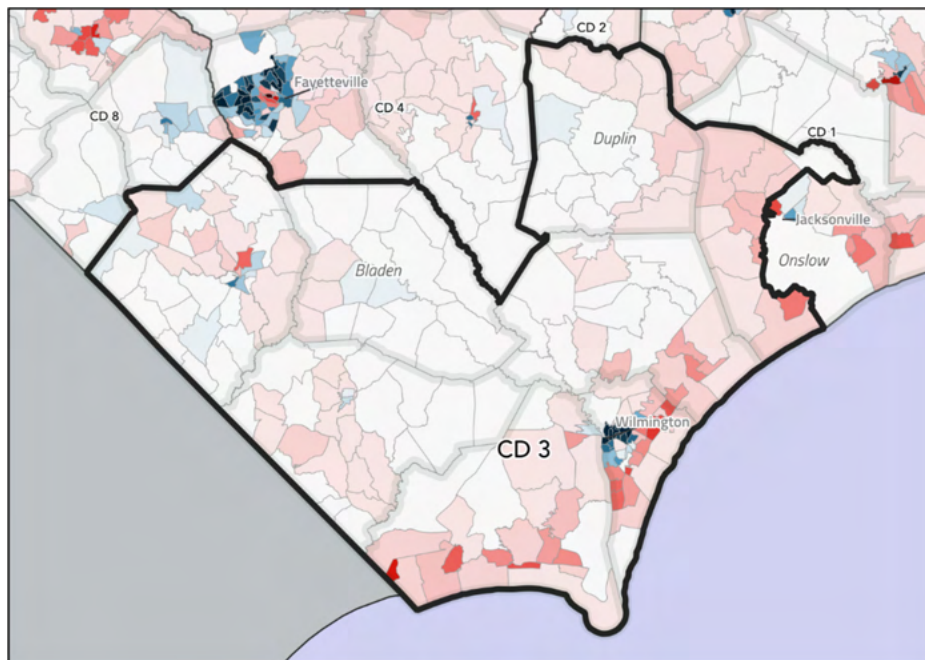
122. District 2 was a Democratic district under both the 2016 and 2019 Congressional Plans. The 2021 Congressional Plan significantly improves Republicans' voting strength in the district by removing the Democratic stronghold of Greenville from Congressman Butterfield's district and placing it into the new District 1. Legislative Defendants further undermined Democratic voting strength in this district by expanding the boundaries of its predecessor westward, stretching nearly 200 miles from the east to encompass the Republican strongholds of Caswell and Person Counties.



123. Legislative Defendants succeeded in undermining Democratic competitiveness in this district: President Biden won 51% of the vote in this new district, compared to 54% under the predecessor district in the 2019 Congressional Plan.

Congressional District 3

124. Ignoring the overwhelming calls of constituents to place the competitive Sandhills region in a single congressional district, the 2021 Congressional Plan splits it across Districts 3, 4, and 8. The plan creates a safe Republican seat in District 3 by combining the eastern part of the region with counties along the southeastern coastline. The eastern boundary hews around the relatively Democratic city of Jacksonville, which is instead placed in District 1 where its residents have no realistic prospect of electing a Democratic candidate.

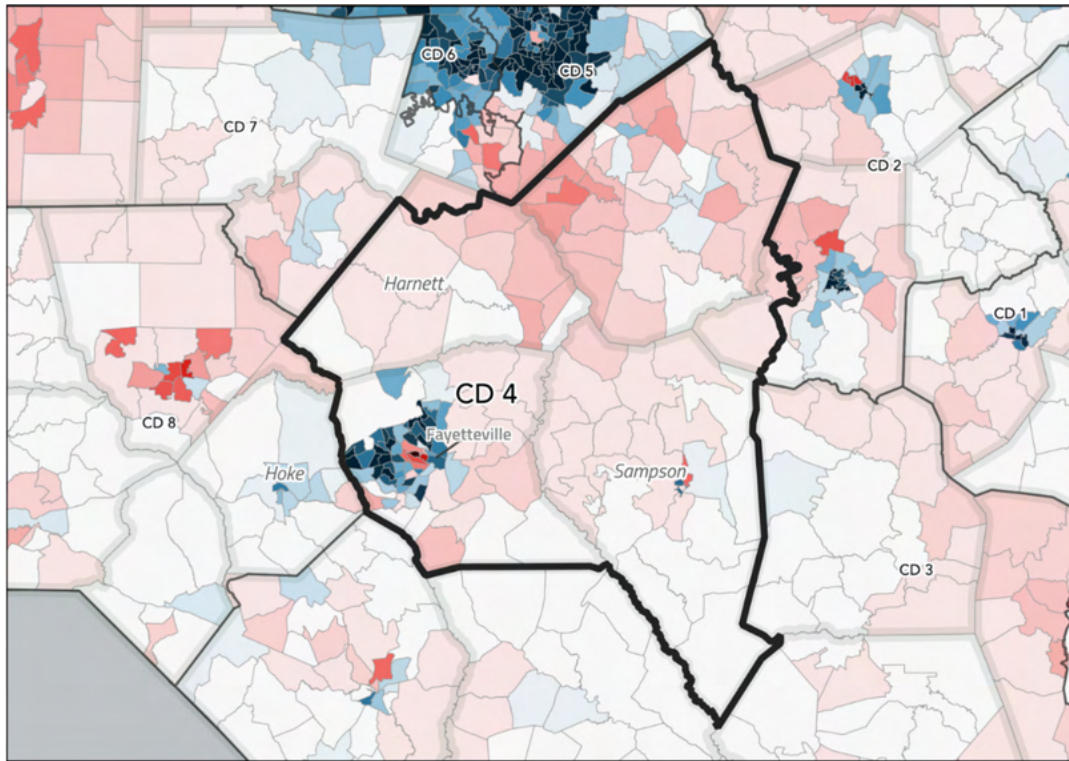


125. District 3 is indeed a safe Republican seat: President Biden won only 41.5% of the vote in this district in the 2020 election.

Congressional District 4

126. Legislative Defendants likewise engineered District 4 to be a safe Republican seat that destroys the voting power of Democrats in Cumberland County—home to Fayetteville and Fort Bragg. District 4 combines the Democratic stronghold of Cumberland County with the three overwhelmingly Republican counties of Sampson, Johnston, and Harnett. The district also picks

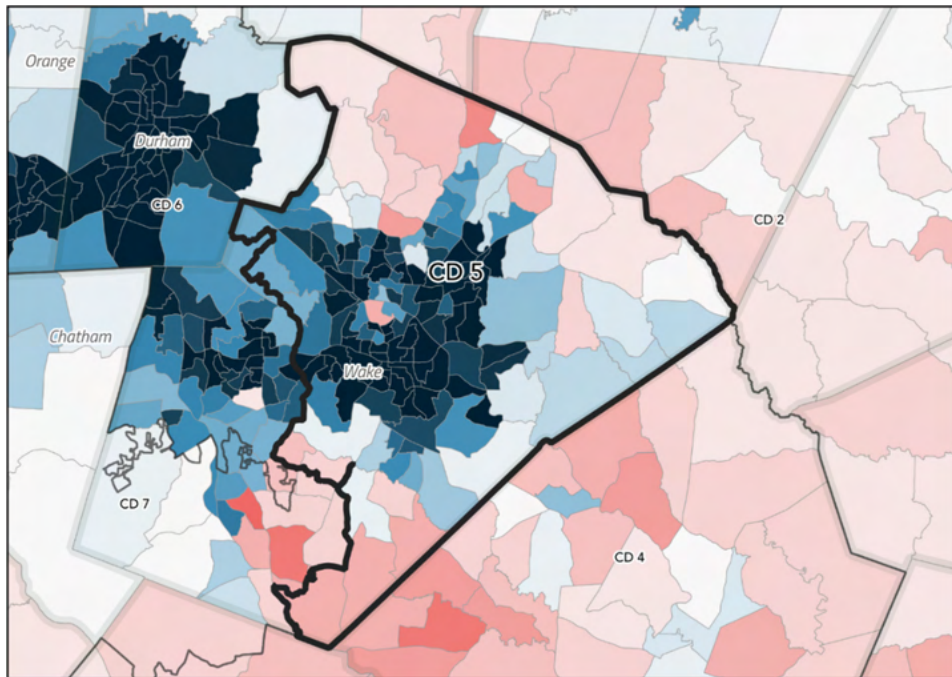
up heavily Republican VTDs in Wayne County.



127. As expected, the new District 4 performs as a Republican district. In the 2020 presidential election, President Biden received only 46.5% of the vote.

Congressional District 5

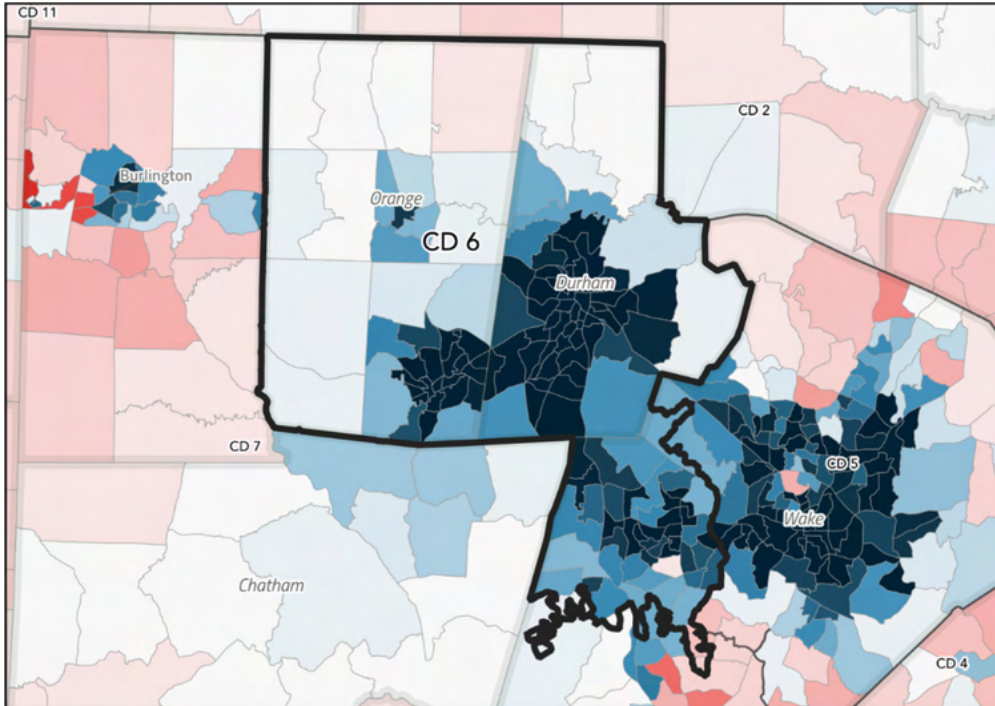
128. District 5 is the result of flagrant packing and cracking of Democratic voters in the largest Democratic stronghold in the state—Wake County. The 2021 Congressional Plan packs these voters by creating a single, safe Democratic district—District 5—out of most of Wake County, including all of its most Democratic VTDs. It then splits the remaining Wake County Democratic voters into two neighboring districts to dilute their power: Voters in Cary and Apex are packed into the safe Democratic District 6, which contains heavily Democratic Orange and Durham Counties, while the remaining population is roped into the overwhelmingly Republican District 7, which stretches west across the state to pick up heavily Republican Randolph and parts of Davidson and Guilford Counties.



129. Legislative Defendants succeeded in creating a safe Democratic district: President Biden won an overwhelming 65.5% of the vote in the new District 5 in the 2020 presidential election.

Congressional District 6

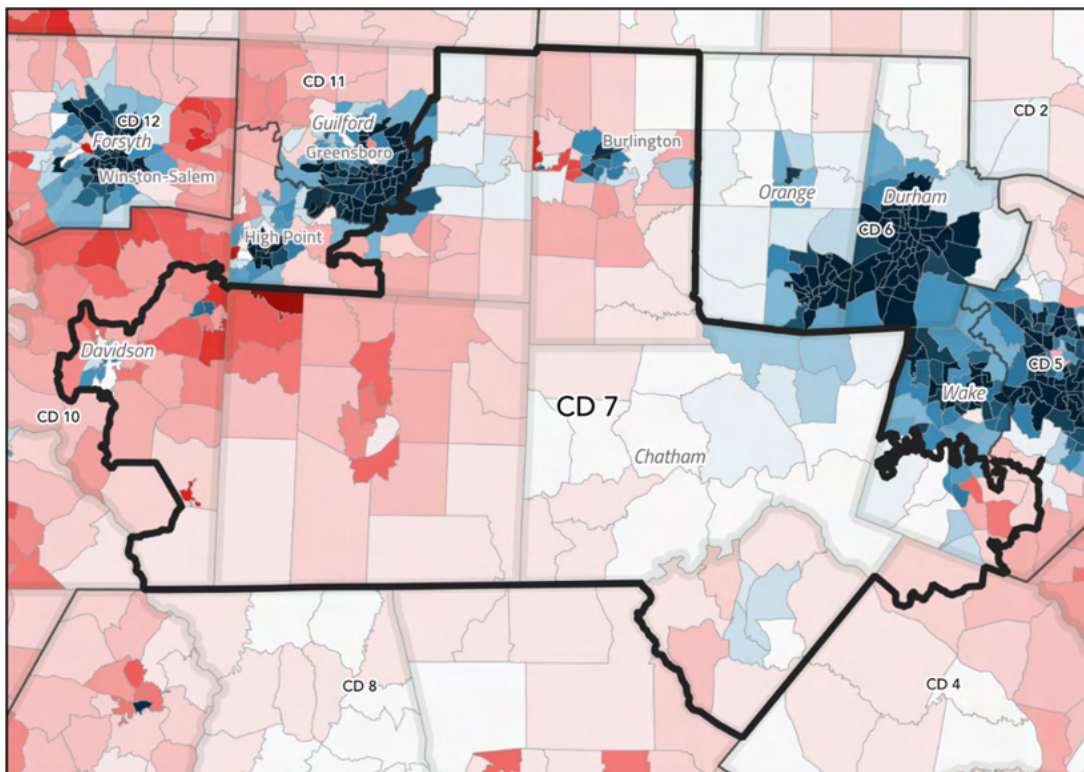
130. Legislative Defendants packed Democratic voters into District 6 to create a safe Democratic seat. They did so by combining the heavily Democratic Orange and Durham Counties into a single district. District 6 also includes a heavily Democratic swath of voters from the fractured Wake County. This pairing is comparable to the way in which these areas were packed in the 2016 Congressional Plan.



131. As expected, District 6 is an overwhelmingly Democratic district where Democrats' votes are wasted: President Biden won 73.3% of the vote in the new District 6.

Congressional District 7

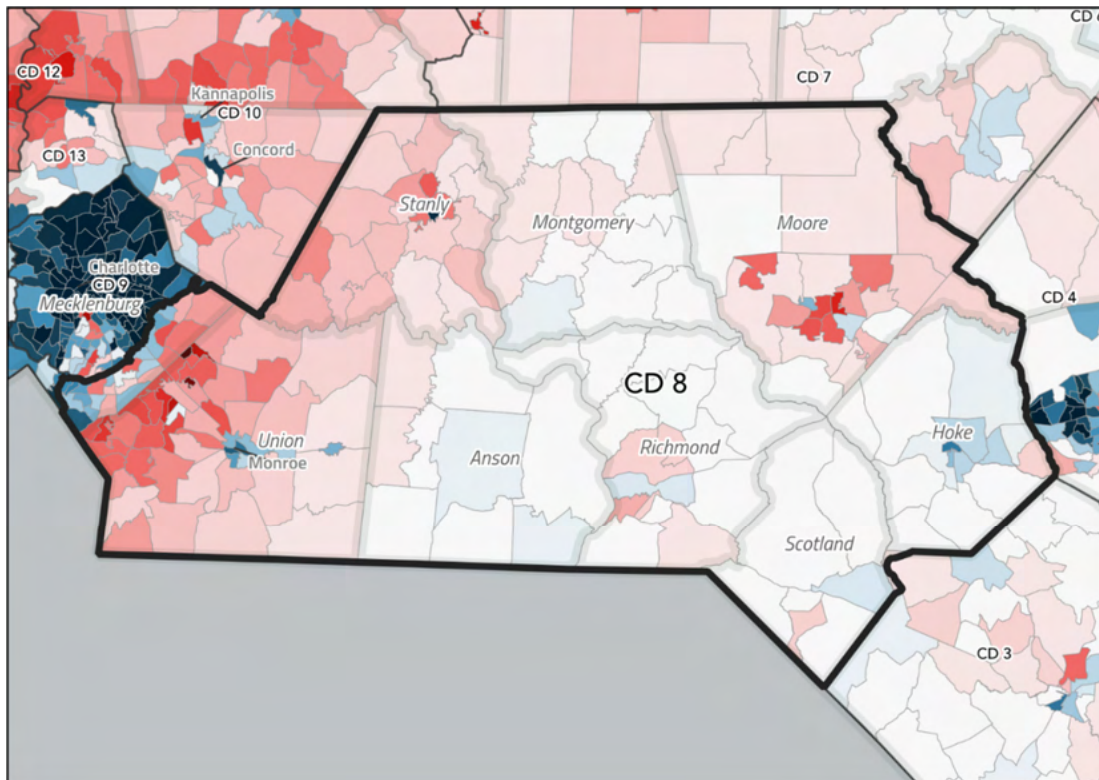
132. Legislative Defendants created a safe Republican seat in District 7 by fracturing the Democratic stronghold of Guilford County. District 7 stitches together Democratic voters from the southeastern portion of Greensboro and Guilford County, along with Democratic-leaning Chatham County and Democratic-leaning voters from the fractured Wake County, with heavily Republican Randolph, Alamance, and Lee Counties. District 7 also borrows heavily Republican VTDs from Davidson County in the western part of the district.



133. Democrats have no meaningful chance of electing a candidate of their choice in the new District 7: President Biden won only 41.1% of the vote in this district during the 2020 presidential election.

Congressional District 8

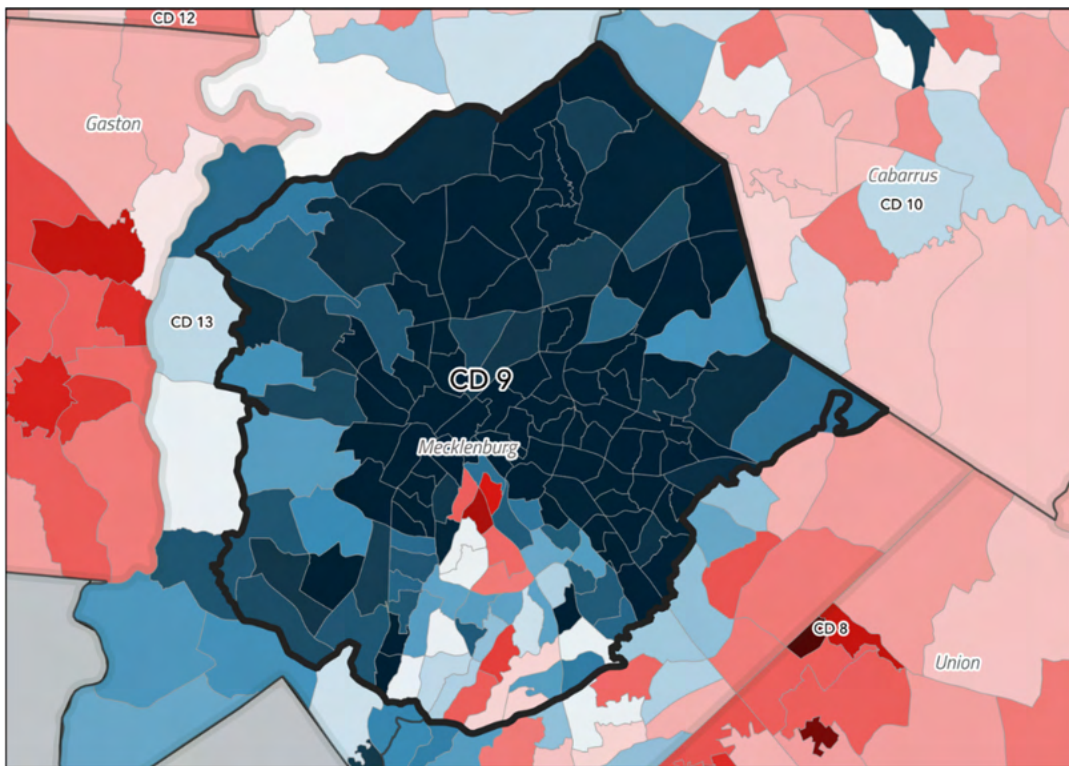
134. Legislative Defendants created a safe Republican seat in District 8 by combining Democratic-leaning Hoke and Anson Counties with heavily Republican Union, Moore, Montgomery, and Stanly Counties. As discussed in greater detail below, Legislative Defendants also included portions of heavily Democratic Mecklenburg County in District 8, splitting Charlotte and ensuring that Democratic votes in that county would be wasted in this safe Republican seat.



135. District 8 performs as expected: President Biden won only 41.1% of the vote in the new District 7.

Congressional District 9

136. District 9, a guaranteed Democratic district capturing a carefully hewn chunk of Charlotte, reflects flagrant packing of Democratic voters in heavily Democratic Mecklenburg County. As discussed earlier, Legislative Defendants divided this Democratic stronghold into three districts: many (but not all) of Mecklenburg County’s most Democratic VTDs are packed into District 9. The rest of Mecklenburg’s Democratic voters are meticulously cracked between District 8 and District 13.

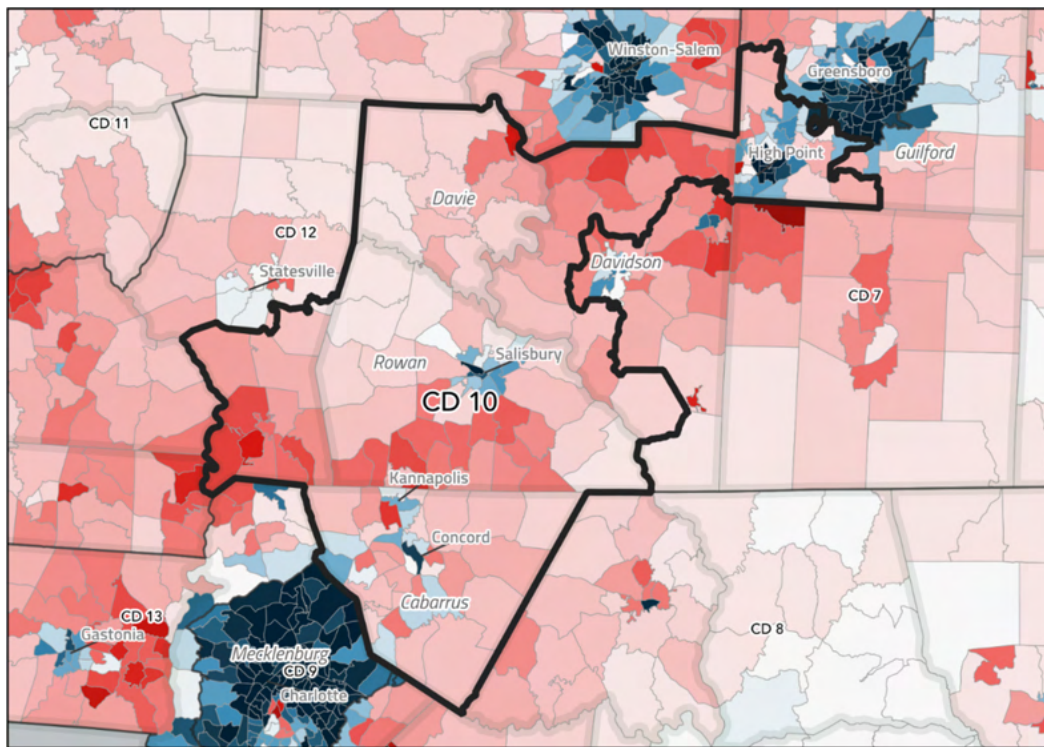


137. Legislative Defendants inarguably succeeded in wasting Democrats’ votes by packing them into this district: President Biden won an overwhelming 75.8% of the vote in this district in the 2020 presidential election, an increase from 71.5% under the Charlotte-based District 12 in the 2019 Congressional Plan.

Congressional District 10

138. As discussed, Legislative Defendants cracked Guilford County—one of the largest

Democratic counties in the state—among three different districts, ensuring that all Democratic votes in Guilford County are wasted. District 10, the southeastern district in the tripartite split, groups the heavily Democratic voters in High Point with the overwhelmingly Republican neighboring counties of Davidson, Cabarrus, Rowan, and Davie. District 10 in the 2021 Plan thus closely resembles District 13 in the 2016 Congressional Plan, which similarly paired High Point and other Democratic Guilford County voters with several of the same Republican counties to the west.

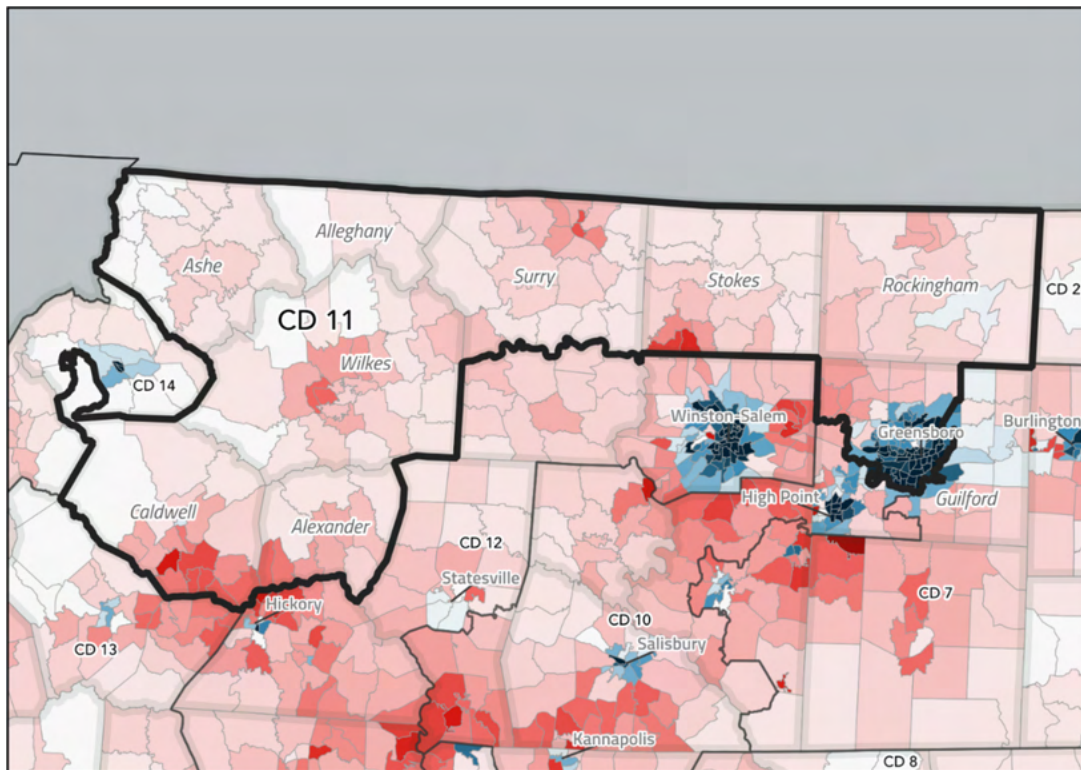


139. Legislative Defendants succeeded in creating another safe Republican seat here: President Biden won only 39.5% of the vote in the new District 10 in the 2020 election.

Congressional District 11

140. Evoking a handgun aiming eastward, District 11 takes the third portion of the fractured Guilford County—including much of the heavily Democratic city of Greensboro—and combines it with heavily Republican counties in the northwestern part of the state, ensuring that

Greensboro’s Democratic voters have no influence in a safe Republican district. District 11 also cuts out a bizarre, boot-like bit of Watauga County to encompass the residential address of Republican incumbent Congresswoman Virginia Foxx, in a seemingly intentional effort to place her in the same district as Congresswoman Manning. District 11 thus takes the same basic approach to splitting apart the Triad area as District 5 did in the 2016 Congressional Plan, but swaps Guilford’s Democratic voters in for those in Forsyth County.

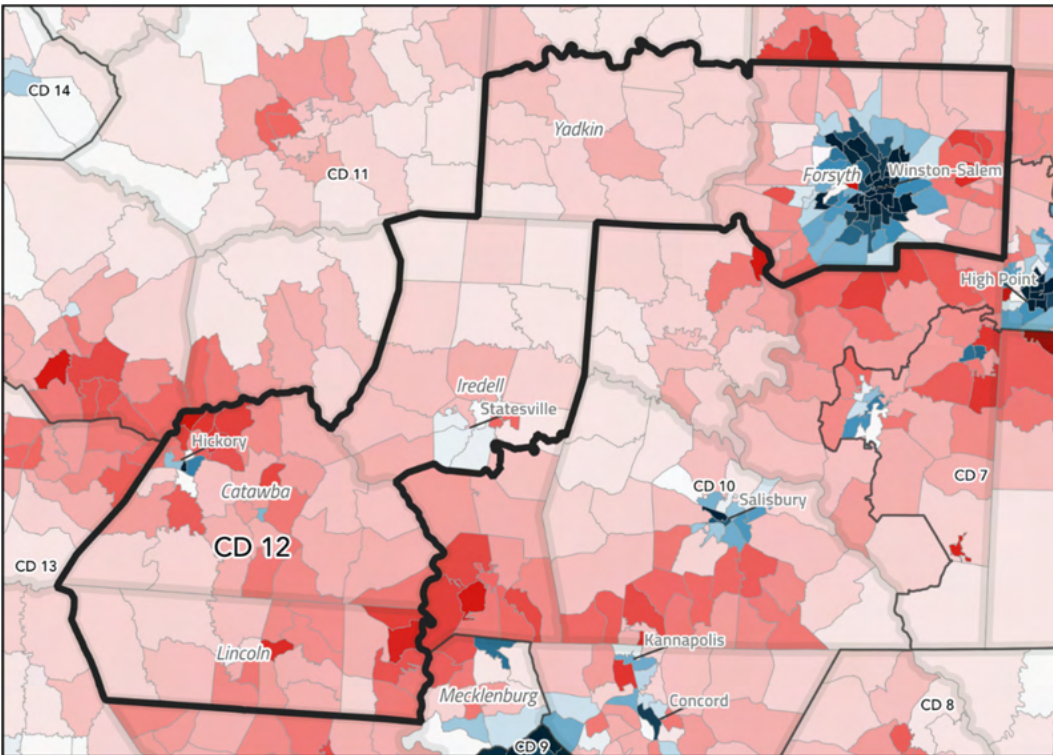


141. As expected, the new District 11 is a safe Republican seat: President Biden won a mere 42.9% of the vote here in 2020.

Congressional District 12

142. District 12 pieces together heavily Democratic Forsyth County, including Winston-Salem, with four heavily Republican counties to the south and west. District 12 also splits Iredell County in half with District 10, and fences in the Democratic cities of Statesville and Hickory. The result is a safe Republican district that effectively guarantees that Democratic voters in Winston-

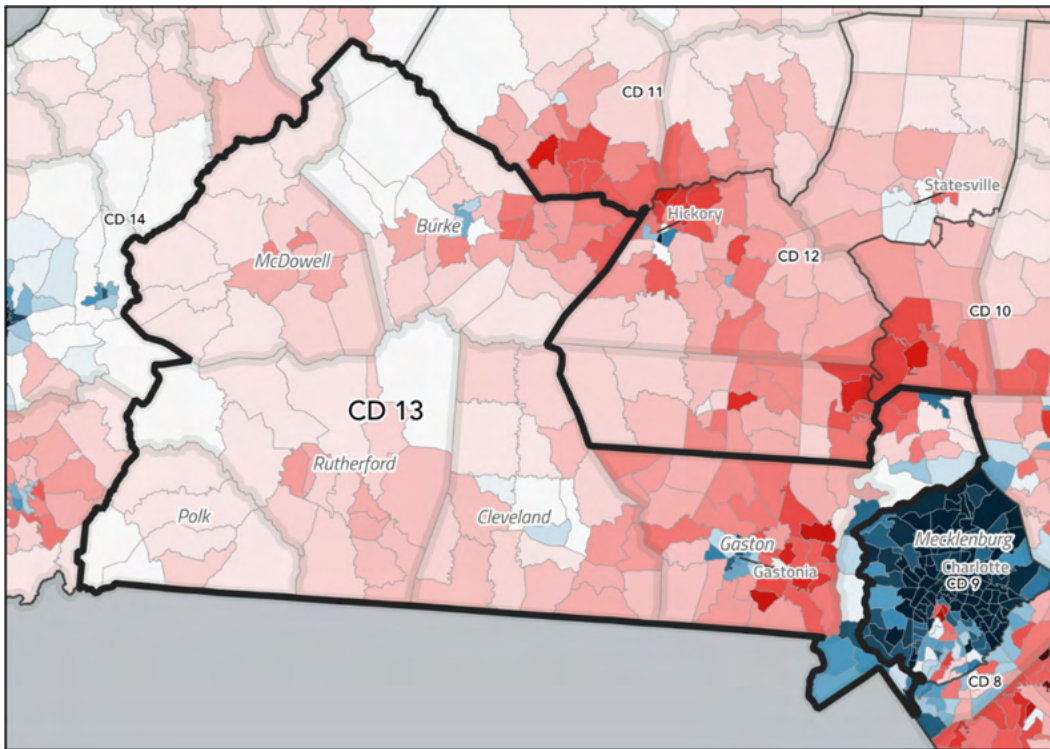
Salem, Statesville, and Hickory cannot elect a candidate of their choice.



143. In the 2020 presidential election, President Biden won only 43.4% of the vote in this new district.

Congressional District 13

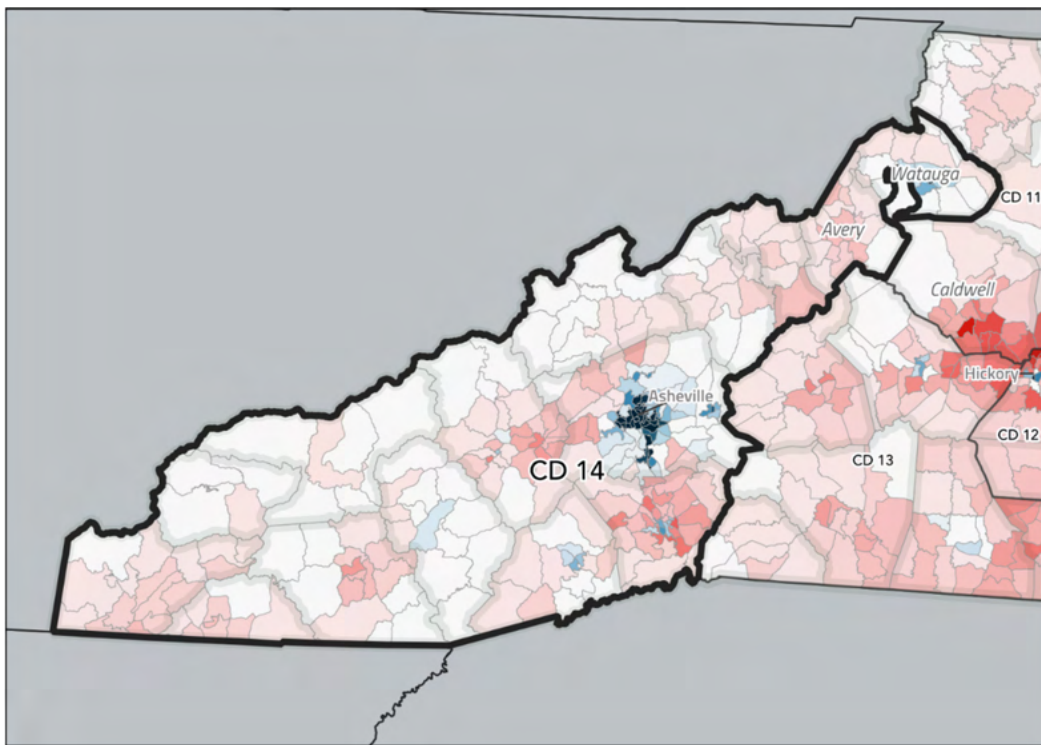
144. Akin to District 10 in the 2016 Congressional Plan, Legislative Defendants created a safe Republican seat in District 13 by combining voters from the cracked Mecklenburg County and from Gastonia with heavily rural and Republican counties to the west. While two incumbents are double bunched in neighboring District 11, no incumbent resides in District 13, which includes Defendant Speaker Moore’s residence.



145. The new District 13 performs as expected: President Biden won 39.2% of the vote here in the 2020 election.

Congressional District 14

146. Finally, similar to District 11 in the 2016 Congressional Plan, Legislative Defendants created a safe Republican seat in District 14 by capturing heavily Republican counties in the western part of the state, pairing them with Asheville’s Democratic voters to ensure that they cannot elect a candidate of their choice. District 14 pairs Watauga County and Buncombe for the first time since the 1870s and meticulously avoids the Watauga County boot covering Republican incumbent Virginia Foxx.



147. Democrats have little chance of electing a candidate of their choice here: President Biden won 46.3% of the vote here in 2020.

I. The 2021 Senate and House Plans pack and crack plaintiffs and other democratic voters to dilute their votes.

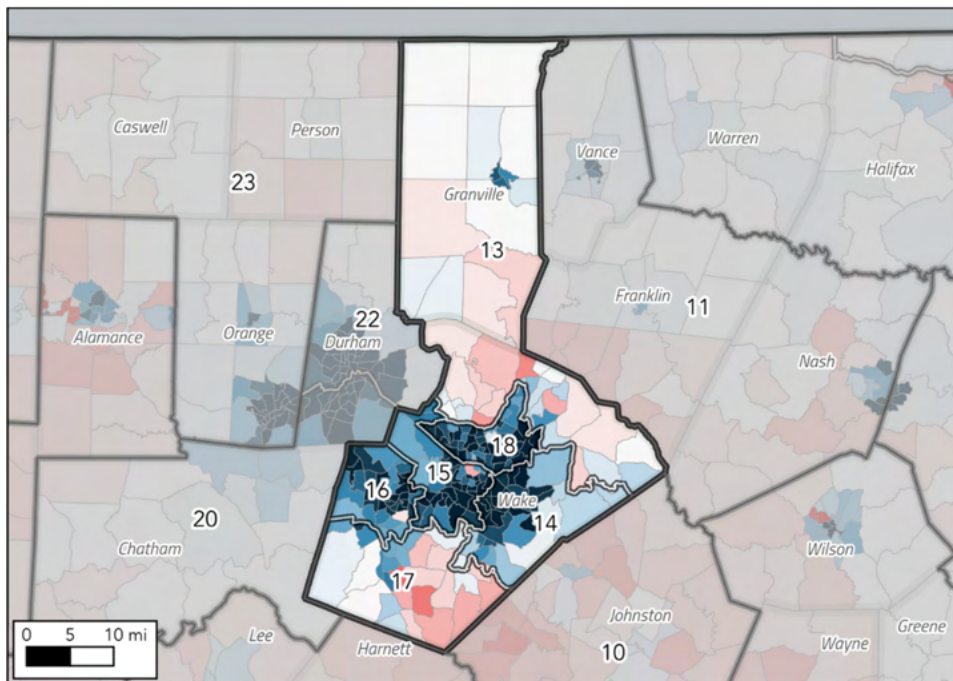
148. To maximize the number of Republican seats in the General Assembly, the 2021 Senate and House Plans meticulously pack and crack Democratic voters, including through

Legislative Defendants’ choice of county clusters in situations where the Whole County Rule left them with options. The sections below set forth some of the examples of packing and cracking of Democratic voters in the 2021 Senate and House Plans.

1. The 2021 Senate Plan packs and cracks Democratic voters.

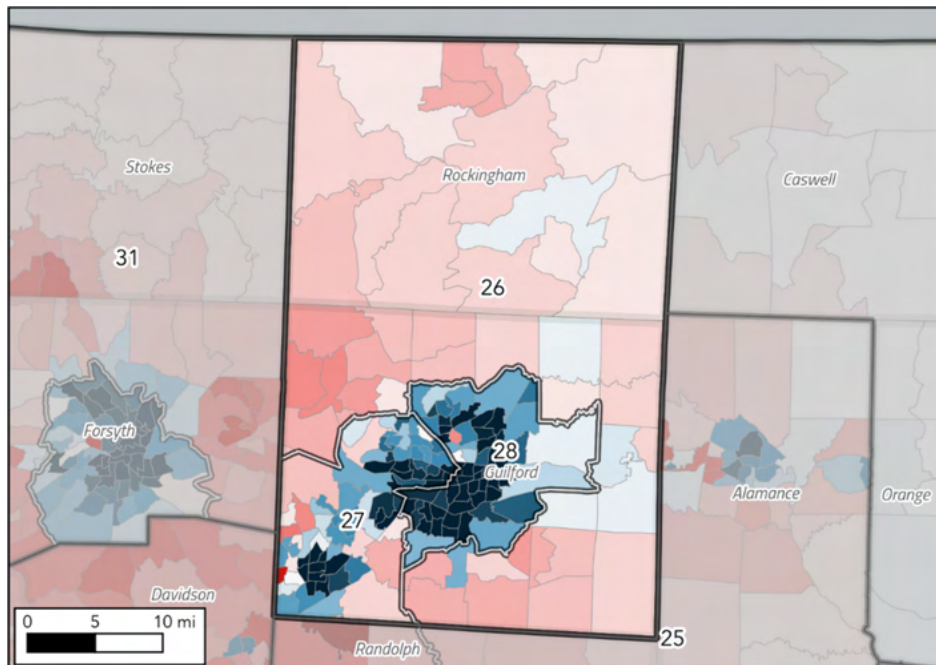
Granville-Wake Grouping (Senate Districts 13, 14, 15, 16, 17, and 18)

149. Like the 2021 Congressional Plan, the 2021 Senate Plan entrenches a statewide partisan advantage for Republicans in large part by strategically packing and cracking voters in the three largest Democratic Counties—Wake, Guilford, and Mecklenburg. Legislative Defendants packed Democratic voters in Wake County into four overwhelmingly Democratic districts as shown below (Districts 14, 15, 16, and 18). The upshot of this inefficient distribution of Democratic voters is that the 2021 Senate Plan produces a Republican seat in District 13, which pairs Democratic VTDs in northern Wake County with Republican Granville County. Moreover, the configuration of Districts 17 and 13 are similar to Districts 17 and 18 in the 2017 Senate Plan that was struck down as an unlawful gerrymander in *Common Cause*.



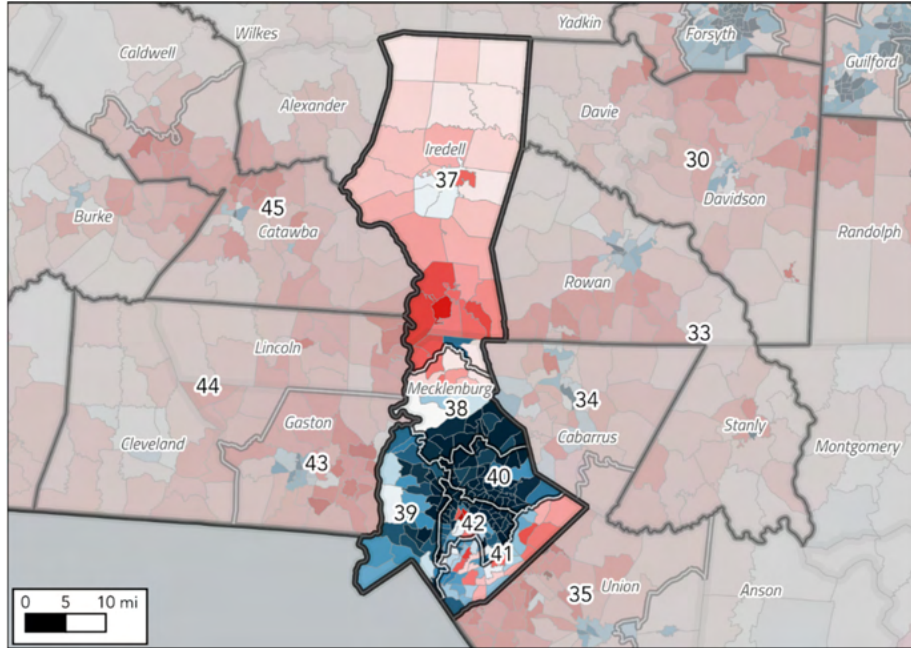
Guilford-Rockingham Grouping (Senate Districts 26, 27, and 28)

150. In heavily Democratic Guilford County, Legislative Defendants packed Democratic voters into two districts (District 27 and 28) that the Democratic candidate will win by overwhelming margins. Legislative Defendants then combined Guilford County’s remaining voters with voters in heavily Republican Rockingham County to the north, creating a safe Republican seat in District 26 as shown below.



Iredell-Mecklenburg Grouping (Senate Districts 37 38, 39, 40, 41, and 42)

151. Legislative Defendants further entrenched a statewide partisan advantage in the Senate Plan by packing and cracking Democratic voters in Mecklenburg County. The 2021 Senate Plan packs Mecklenburg voters into four overwhelming Democratic seats—Districts 38, 39, 40, and 42. Legislative Defendants then combined the remaining Democratic VTDs in northern Mecklenburg County with Iredell County to produce a safe Republican seat (District 37), in which Democratic voters have no meaningful opportunity to elect a candidate of their choice.

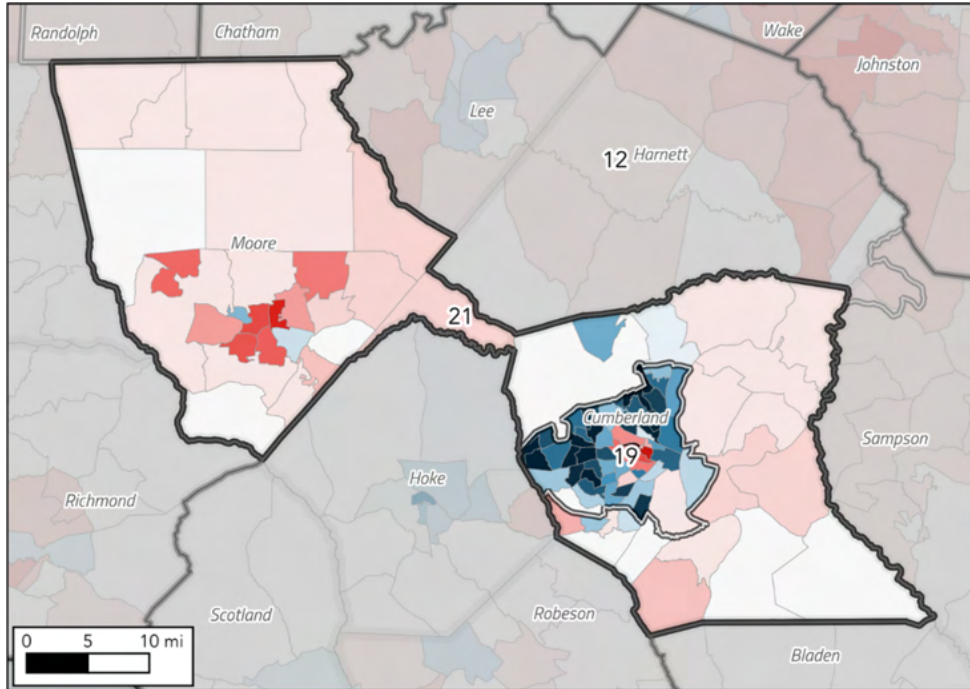


Buncombe-McDowell-Burke Grouping (Senate Districts 43, 44, 46, 48, 49)

152. Although Legislative Defendants had two clustering options for these five districts, including combining heavily Democratic Buncombe County with the more Democratic Henderson and Polk Counties, they chose instead to combine Buncombe County with McDowell and Burke to enable the creation of a packed Buncombe district and a Republican-favoring district in McDowell and Burke.

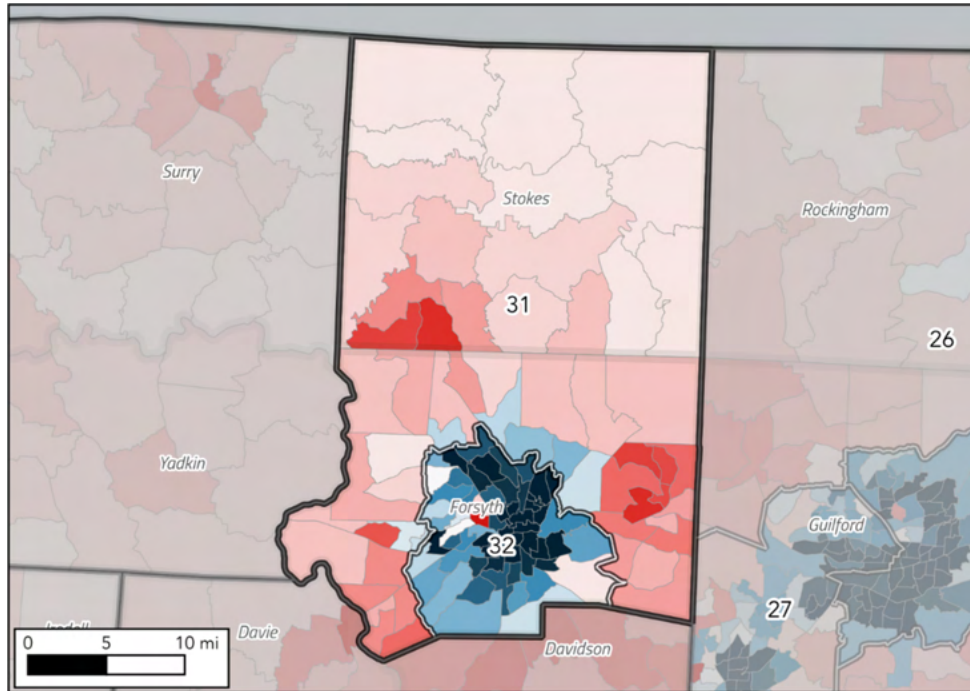
Cumberland-Moore Grouping (Senate Districts 19 and 21)

153. Legislative Defendants gerrymandered heavily Democratic Cumberland County by packing Cumberland's most Democratic VTD's into District 19, creating an overwhelming Democratic district. Legislative Defendants then combined Cumberland's remaining VTDs with heavily Republican Moore County, ensuring that Democratic voters in this district have no meaningful opportunity to elect a candidate of their choice. This configuration also split the town of Hope Mills.



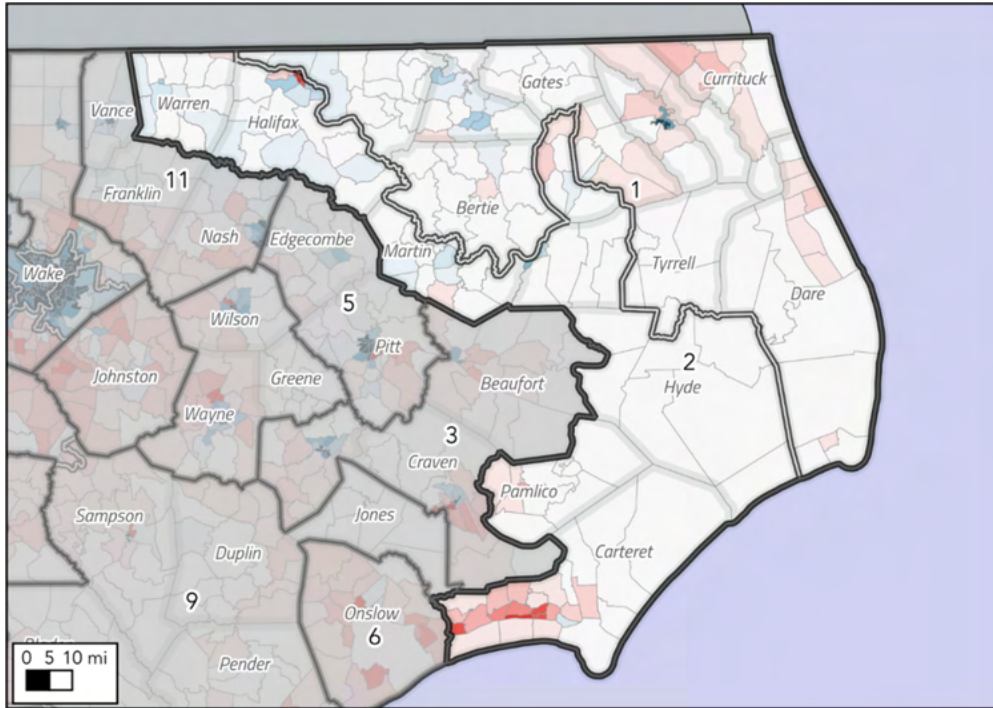
Forsyth-Stokes Grouping (Senate Districts 31, 32, and 36)

154. Legislative Defendants further diluted Democratic voting power throughout the 2021 Senate Plan by needlessly packing Democratic voters in Forsyth County into District 32, which Democrats will regularly win by overwhelming margins. By creating a packed District 32, Legislative Defendants ensured that Forsyth County’s remaining Democratic voters are unable to elect a candidate of their choice by combining them with heavily Republican Stokes County to create a safe Republican seat in District 31. Legislative Defendants were not required by the Whole County Rule to combine Forsyth County with Stokes County, but did so because that combination was more favorable to Republicans.

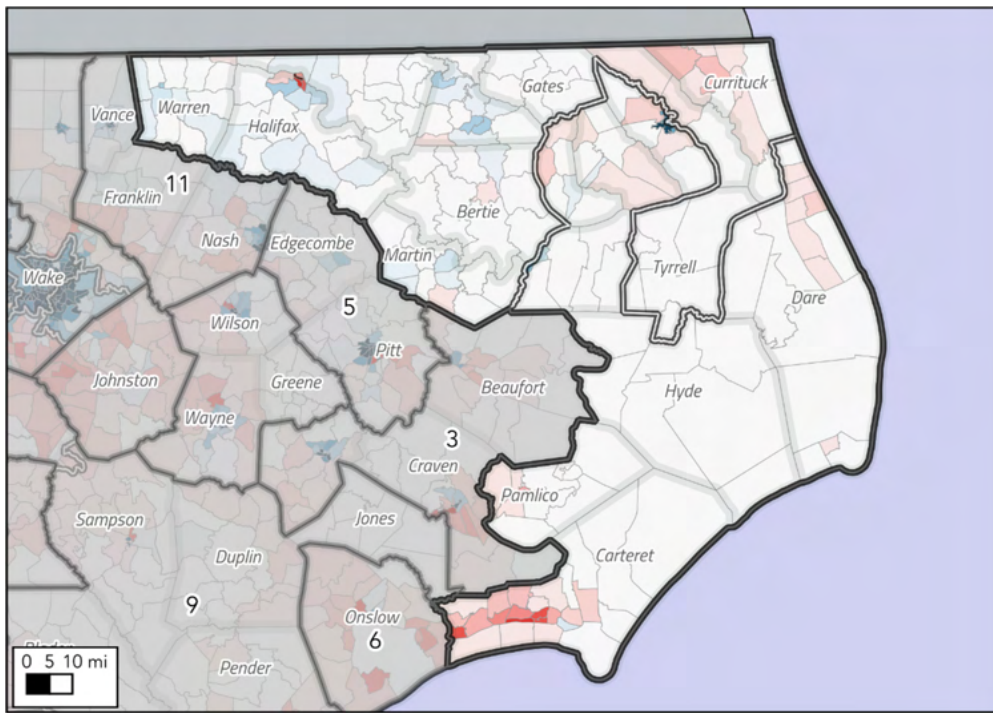


Northeast Grouping (Senate Districts 1 and 2)

155. Legislative Defendants further diluted Democratic voting power by cracking Democratic voters in the state’s northeastern quadrant. Although residents of the heavily Democratic Counties of Bertie, Hertford, Northampton, Halifax, and Warren could have been grouped into a single district, Legislative Defendants divided this Democratic cluster of counties between Districts 1 and 2. The upshot of this biased configuration is that Districts 1 and 2 are safe Republican seats, ensuring that voters in this heavily Democratic portion of the state have no meaningful opportunity to elect a member of their choice.



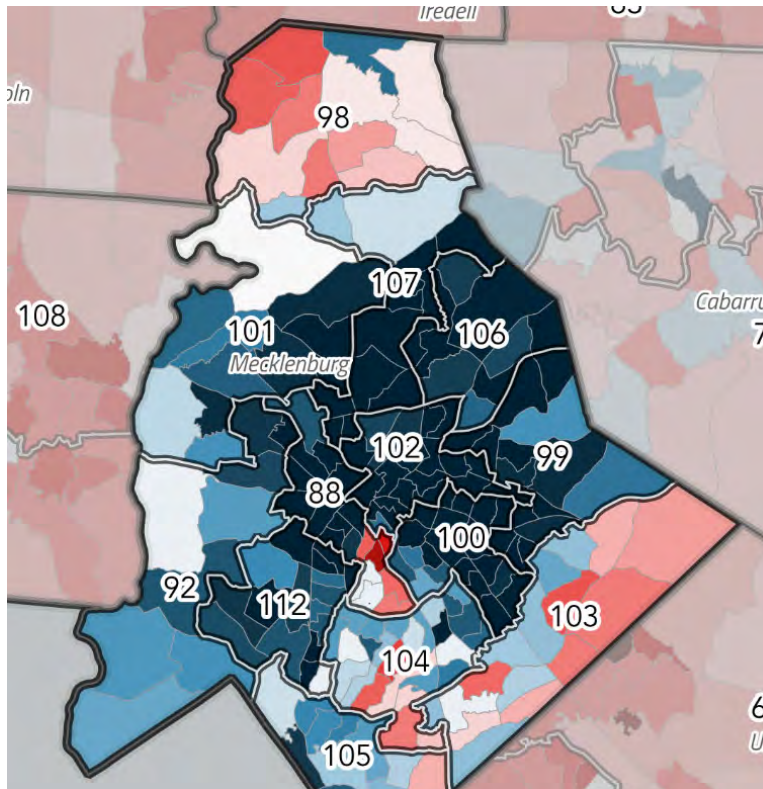
156. As shown below, the alternative grouping of these counties would have given Democrats in heavily Democratic of Bertie, Hertford, Northampton, Halifax, and Warren Counties a meaningful chance of electing a member of their choice:



2. The 2021 House Plan packs and cracks Democratic voters.

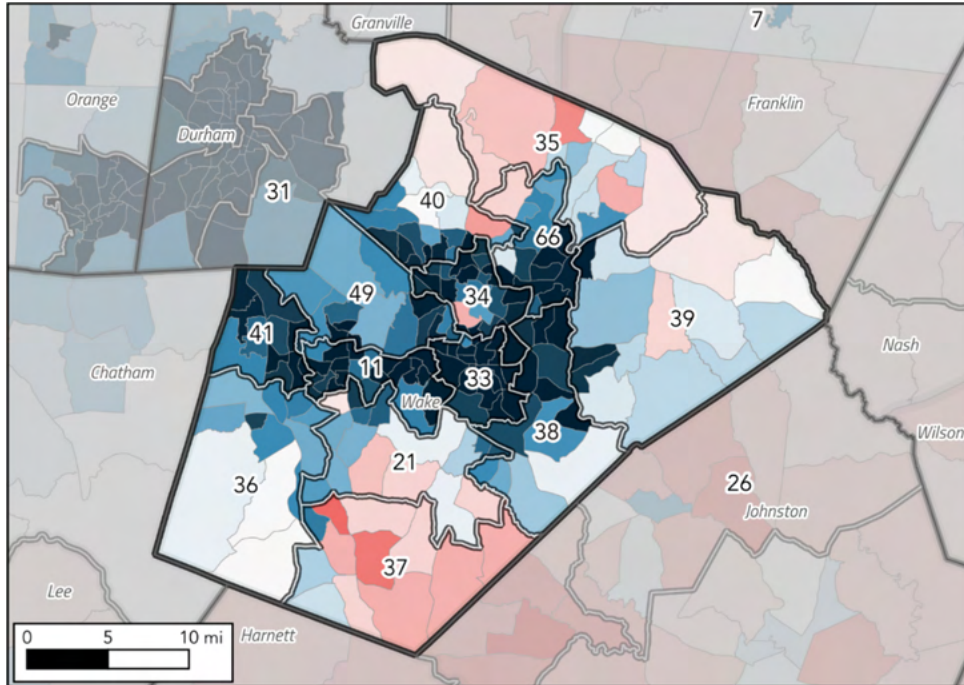
Mecklenburg County (House Districts 88, 92, 98, 99 100, 101, 102, 103, 104, 105, 106, 107, 112)

157. Legislative Defendants entrenched their majority in the House by strategically packing Democratic voters throughout Mecklenburg County. By packing Mecklenburg voters into a handful of overwhelming Democratic districts as shown in the image below, Legislative Defendants created two districts (House Districts 98 and 103) favorable to Republicans.



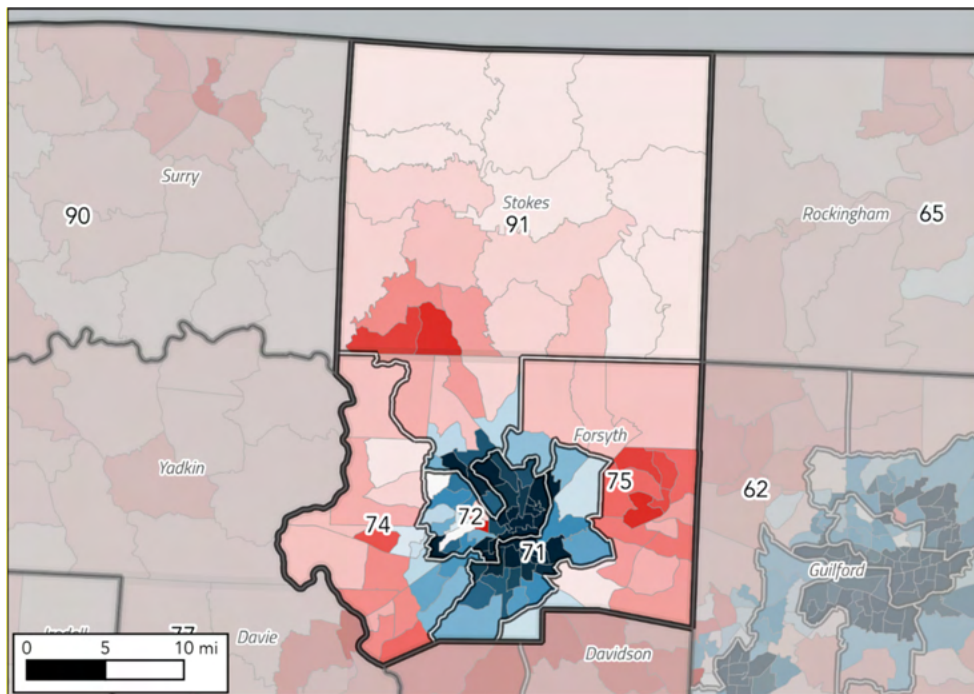
Wake County (House Districts 11, 21, 33, 34, 35, 36, 37, 38, 39, 40, 41, 49)

158. As with the cluster of House Districts in Mecklenburg, Legislative Defendants further diluted Democratic voting power in Wake County and in turn statewide by packing Wake Democrats into a handful of overwhelmingly safe districts, enabling the creation of two Republican-leaning districts (House Districts 35 and 37).



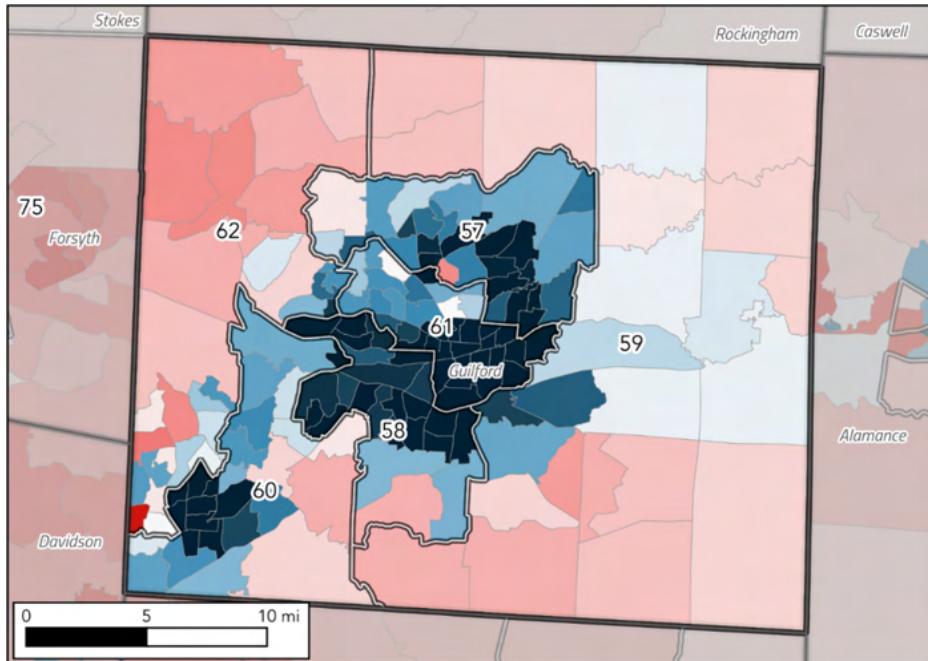
Forsyth-Stokes Grouping (House Districts 71, 72, 74, 75, 91)

159. Legislative Defendants further diluted Democratic voting power throughout the 2021 House Plan by needlessly packing Democratic voters in Forsyth County’s Winston-Salem area into two overwhelmingly Democratic districts (Districts 71 and 72). Forsyth County’s remaining VTDs are then distributed into two oddly shaped safe Republican districts where Democratic voters have no meaningful opportunity to elect candidates of their choice (Districts 75 and 91) and a third district that favors Republicans (District 74).



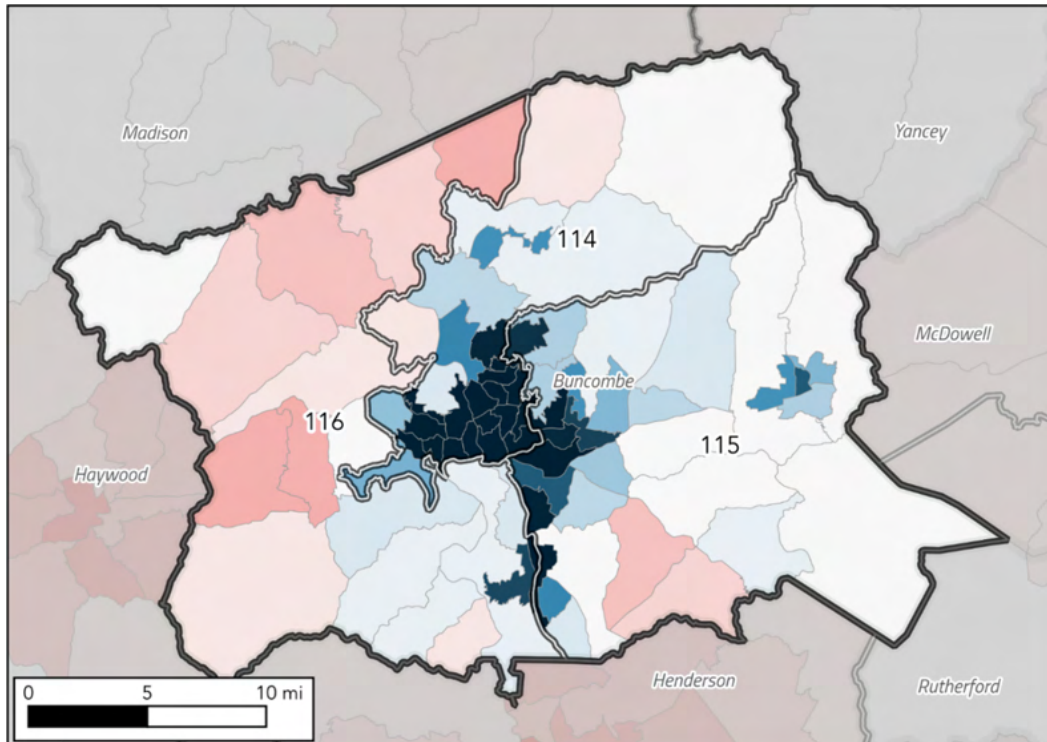
Guilford County (House Districts 57, 58, 59, 60, 61, 62)

160. Legislative Defendants further eroded Democratic voting power statewide by unnecessarily packing Democratic voters in Guilford County. The 2021 House Plan packs Guilford County Democrats into four overwhelmingly Democratic districts (Districts 57, 58, 60, and 61) in order to carve out two Republican districts (Districts 59 and 62).



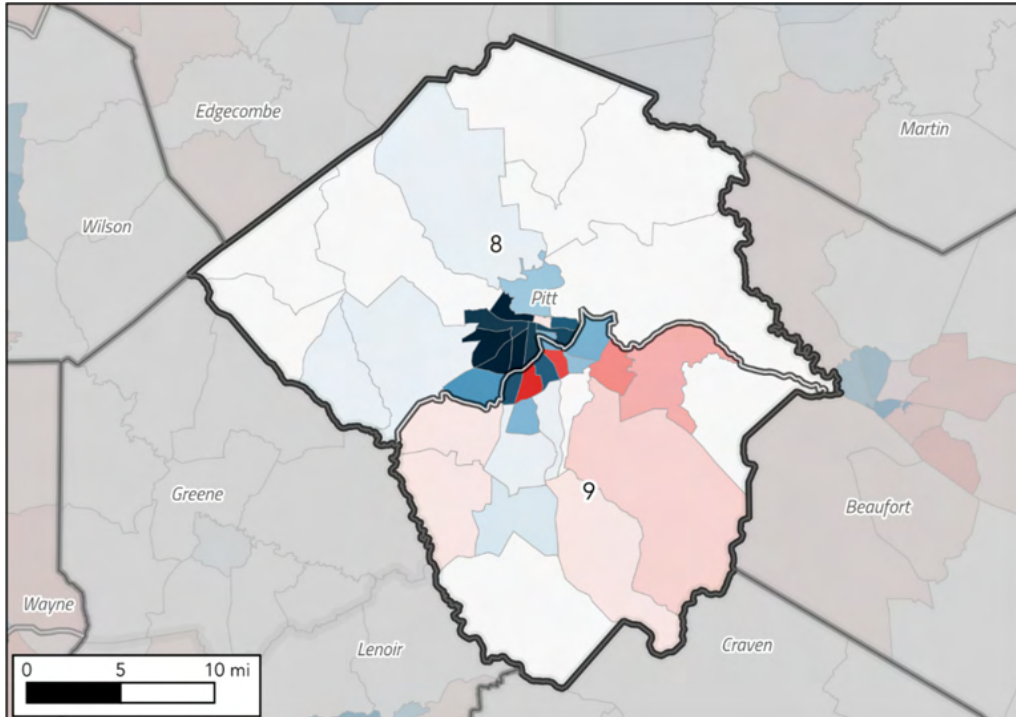
Buncombe County (House Districts 114, 115, 116)

161. Legislative Defendants further cemented their majority in the House by artificially creating a Republican district in heavily Democratic Buncombe County. The 2021 House Plan packs Democrats into two overwhelmingly Democratic seats (Districts 114 and 115) in order to carve out a Republican seat in District 116.



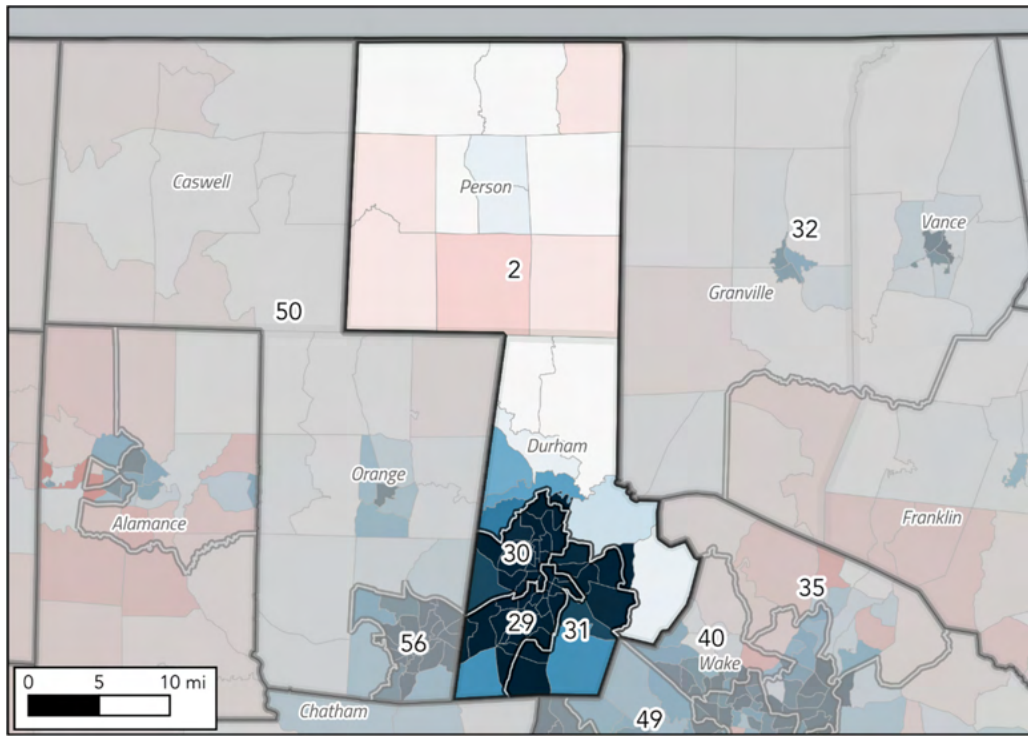
Pitt County (House Districts 8 and 9)

162. Legislative Defendants created a Republican House District in heavily Democratic Pitt County by packing Pitt County’s most Democratic VTDs into District 8. The upshot of this manipulation of district boundaries is that District 8 is an overwhelmingly safe Democratic seat, while District 9 narrowly favors the Republicans.



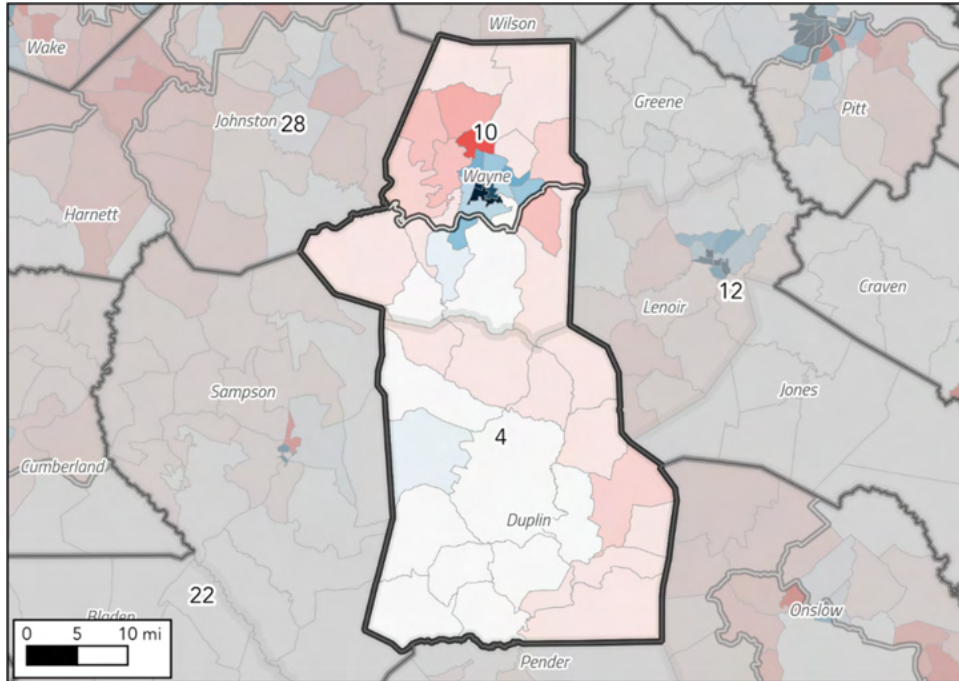
Durham-Person Grouping (House Districts 2, 29, 30, and 31)

163. Legislative Defendants manipulated district lines in heavily Democratic Durham County, packing the County's most heavily Democratic VTDs into districts 29, 30, and 31 to allow for a Republican seat in District 2.



Duplin-Wayne Grouping (House Districts 4, 10, 14, 15, 16, and 22)

164. Legislative Defendants cracked Democratic voters in Wayne County between Districts 4 and 10. As a result of this cracking, Districts 4 and 10 are safe Republican seats in which Democratic voters have no meaningful opportunity to elect a candidate of their choice. The Whole County Rule did not require Legislative Defendants to pair Wayne and Duplin Counties.



COUNT ONE
Violation of the North Carolina Constitution’s
Free Elections Clause, Art. I, § 10

165. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

166. Article I, Section 10 of the North Carolina Constitution, which has no counterpart in the U.S. Constitution, provides that “All elections shall be free.”

167. North Carolina’s Free Elections Clause traces its roots to the 1689 English Bill of Rights, which declared that “Elections of members of Parliament ought to be free.” Bill of Rights 1689, 1 W. & M. c. 2 (Eng.); *see* John V. Orth, *North Carolina Constitutional History*, 70 N.C. L. Rev. 1759, 1797–98 (1992).

168. This provision of the 1689 English Bill of Rights was a product of the king’s efforts to manipulate parliamentary elections, including by changing the electorate in different areas to achieve “electoral advantage.” J.R. Jones, *The Revolution of 1688 in England* 148 (1972). The king’s efforts to maintain control of parliament by manipulating elections led to a revolution. After dethroning the king, the revolutionaries called for a “free and lawful parliament” as a critical reform. Grey S. De Krey, *Restoration and Revolution in Britain: A Political History of the Era of Charles II and the Glorious Revolution* 241, 247-48, 250 (2007).

169. North Carolina has strengthened the Free Elections Clause since its adoption to reinforce its principal purpose of preserving the popular sovereignty of North Carolinians. The original clause, adopted in 1776, provides that “elections of members, to serve as Representatives in the General Assembly, ought to be free.” N.C. Declaration of Rights, VI (1776). Nearly a century later, North Carolina revised the clause to state that “[a]ll elections ought to be free,” thus expanding the principle to include all elections in North Carolina. N.C. Const. art. I, § 10 (1868). And another century later, North Carolina adopted the current version which provides that “[a]ll elections *shall* be free.” As the North Carolina Supreme Court later explained, this change was

intended to “make [it] clear” that the Free Elections Clause and the other rights secured to the people by the Declaration of Rights “are commands and not mere admonitions” to proper conduct on the part of the government. *N.C. State Bar v. DuMont*, 304 N.C. 627, 635, 639 (1982) (internal quotations omitted).

170. Based on the text and history of North Carolina’s Free Elections Clause, “the meaning of the Free Elections Clause is that elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” Order on Inj. Relief at 6. “[E]xtreme partisan gerrymandering—namely redistricting plans that entrench politicians in power, that evince a fundamental distrust of voters by serving the self-interest of political parties over the public good, and that dilute and devalue votes of some citizens compared to others—is contrary to the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at 7.

171. “[P]artisan gerrymandering . . . strikes at the heart of the Free Elections Clause.” *Common Cause v. Lewis*, 18-CVS-014001, slip op. at 305. “[E]xtreme partisan gerrymandering—namely redistricting plans that entrench politicians in power, that evince a fundamental distrust of voters by serving the self-interest of political parties over the public good, and that dilute and devalue votes of some citizens compared to others—is contrary to the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at 302. Simply put, “[e]lections are not free when partisan actors have tainted future elections by specifically and systematically designing the contours of the election districts for partisan purposes and a desire to preserve power.” *Id.* at 305.

172. The 2021 Plans violate the Free Elections Clause in the same way as the invalidated 2016 Plan and 2017 state legislative plans. In creating the 2021 Plan, Legislative Defendants

“specifically and systematically design[ed] the contours of the election districts for partisan purposes and a desire to preserve power.” *Id.* at 305. The 2021 Plans “unlawfully seek to predetermine election outcomes in specific districts” and across the state as a whole. *Id.* Because of Legislative Defendants’ extreme partisan gerrymandering of the 2021 Plans, congressional and state legislative elections in North Carolina are not “conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at 302. For example, the 2021 Congressional Plan takes the three largest Democratic counties in the state and trisects each one among different congressional districts, effectively diluting Democratic voting power throughout the state. And it packs the remaining Democratic strongholds into a handful of congressional districts, resulting in a map that produces 10 safe Republican seats, 3 safe Democratic seats, and 1 competitive seat. The 2021 Senate and House Plans entrench Republican majorities through similarly meticulous packing and cracking of Democratic voters throughout North Carolina.

COUNT TWO
Violation of the North Carolina Constitution’s
Equal Protection Clause, Art. I, § 19

173. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

174. Article I, Section 19 of the North Carolina Constitution provides in relevant part that “[n]o person shall be denied the equal protection of the laws.”

175. North Carolina’s Equal Protection Clause affords broader protections to its citizens in the voting rights context than the U.S. Constitution’s equal protection provisions. *See Stephenson v. Bartlett*, 355 N.C. 354, 376–81 & n.6 (2002); *Blankenship v. Bartlett*, 363 N.C. 518, 523–24, (2009).

176. Irrespective of its federal counterpart, North Carolina’s Equal Protection Clause protects the right to “substantially equal voting power.” *Stephenson*, 355 N.C. at 379. “It is well settled in this State that the right to vote on equal terms is a fundamental right.” *Id.* at 378 (internal

quotation marks omitted). Thus, the North Carolina Supreme Court has enforced the State’s Equal Protection Clause to invalidate other redistricting schemes, such as the combined use of single-member and multi-member districts in a redistricting plan that “impermissibl[y] distin[guished] among similarly situated citizens” and thus “necessarily implicate[d] the fundamental right to vote on equal terms.” *Id.* at 377–78.

177. Partisan gerrymandering violates North Carolina’s Equal Protection Clause. “[P]artisan gerrymandering runs afoul of the State’s obligation to provide all persons with equal protection of law because, by seeking to diminish the electoral power of supporters of a disfavored party, a partisan gerrymander treats individuals who support candidates of one political party less favorably than individuals who support candidates of another party.” Order on Inj. Relief at 8.

178. The 2021 Plans violate North Carolina’s Equal Protection Clause in the same ways as the invalidated 2016 Plan and 2017 state legislative plans. In drawing the new congressional map, Legislative Defendants “acted with the intent, unrelated to any legitimate legislative objection, to classify voters and deprive citizens of the right to vote on equal terms.” *Common Cause v. Lewis*, 18-CVS-014001, slip. op. at 312. Legislative Defendants drew and enacted maps for the House, Senate, and Congress that systematically discriminate against Democratic voters, and that cannot be explained in any other way. Legislative Defendants’ intent is laid bare by the packing and cracking of particular Democratic communities described above.

179. And, as with the 2016 Plan and 2017 state legislative plans, these efforts have produced discriminatory effects for Plaintiffs and other Democratic voters. On a statewide basis, Democrats will continue to receive far fewer congressional and state legislative seats than they would absent the gerrymander. The grossly disproportionate number of seats that Republicans have won and will continue to win in the congressional delegation and in the General Assembly

relative to their share of the statewide vote cannot be explained or justified by North Carolina’s political geography or any legitimate redistricting criteria. The packing and cracking of Democratic voters under the 2021 Plans burdens the representational rights of Democratic voters individually and as a group, and discriminates against Democratic candidates and organizations individually and as a group. “[P]acking dilutes the votes of Democratic voters such that their votes, when compared to the votes of Republican voters, are substantially less likely to ultimately matter in deciding the election results.” *Common Cause*, 18-CVS-014001, slip. op. at 314. And “the entire purpose of cracking likeminded voters across multiple districts is so they do not have sufficient ‘voting power’ to join together and elect a candidate of their choice.” *Id.* Legislative Defendants can offer no legitimate justification for their overriding partisan intent in drawing the 2021 Plan.

COUNT THREE

Violation of the North Carolina Constitution’s Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14

180. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

181. Article I, § 12 of the North Carolina Constitution provides in relevant part: “The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.”

182. Article I, § 14 of the North Carolina Constitution provides in relevant part: “Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained.”

183. “There is no right more basic in our democracy than the right to participate in electing our political leaders—including, of course, the right to vote.” Order on Inj. Relief, *Harper I*, at 9. “Political belief and association constitute the core of those activities protected by the First Amendment.” *Id.* And in North Carolina, “the right to assembly encompasses the right of association.” *Id.* “[F]or elections to express the popular will, the right to assemble and consult for

the common good must be guaranteed.” *Id.* (quoting John V. Orth, *The North Carolina State Constitution* 48 (1995)).

184. Irrespective of the U.S. Constitution, the 2021 Plan violates Article I, § 14 of the North Carolina Constitution by “burden[ing] protected expression based on viewpoint by making Democratic votes less effective.” *Common Cause*, 18-CVS-014001, slip. op. at 322. Legislative Defendants “identified certain preferred speakers (e.g., Republican voters), while targeting certain disfavored speakers (e.g., Democratic voters) because of disagreement with the views they express when they vote.” Order on Inj. Relief, *Harper I*, at 10. Legislative Defendants singled out Democratic voters for disfavored treatment by packing and cracking them into districts with the aim of diluting their votes and, in the case of cracked districts, ensuring that these voters are significantly less likely, in comparison to Republican voters, to be able to elect a candidate who shares their views. “The fact that Democratic voters can still cast ballots under gerrymandered maps changes nothing. The government unconstitutionally burdens speech where it renders disfavored speech *less effective*, even if it does not ban such speech outright.” *Common Cause*, 18-CVS-014001, slip. op. at 323.

185. Irrespective of the U.S. Constitution, the 2021 Plans independently violate Article I, § 12 because it “severely burden[s]—if not outright preclude[s]”—the ability of Democratic voters to associate by eroding their ability to “instruct” and “obtain redress” from their members of Congress and the General Assembly on issues important to them. *Common Cause*, 18-CVS-014001, slip. op. at 326-27.

186. Irrespective of the U.S. Constitution, the 2021 Plans independently violate Article I, Sections 12 and 14 of the North Carolina Constitution by retaliating against Plaintiffs and other Democratic voters based on their exercise of political speech. The 2021 Plans take adverse action

against Plaintiffs and other Democratic voters, retaliates against their protected speech and conduct, and would not have taken the adverse action but for Legislative Defendants’ retaliatory intent to pack and crack Democratic voters because of their prior political speech and associations.

187. There is no legitimate state interest in discriminating and retaliating against Plaintiffs because of their political viewpoints, voting histories, and affiliations. Nor can the 2021 Plans be explained or justified by North Carolina’s geography or any legitimate redistricting criteria.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor and against Defendants, and

a. Declare that the 2021 Plans are unconstitutional and invalid because they violate the rights of Plaintiffs and all Democratic voters in North Carolina under the North Carolina Constitution’s Free Elections Clause, Art. I, § 10; Equal Protection Clause, Art. I, § 19; and Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14;

b. Enjoin Defendants, their agents, officers, and employees from administering, preparing for, or moving forward with the 2022 primary and general elections for Congress, the House, and Senate using the 2021 Plans;

c. Establish new congressional and state legislative districting plans that comply with the North Carolina Constitution, if the North Carolina General Assembly fails to enact new congressional and legislative districting plans comporting with the North Carolina Constitution in a timely manner;

d. Enjoin Defendants, their agents, officers, and employees from using past election results or other political data in any future redistricting of North Carolina’s congressional and state legislative districts to intentionally dilute the voting power of citizens or groups of citizens based

on their political beliefs, party affiliation, or past votes;

e. Enjoin Defendants, their agents, officers, and employees from otherwise intentionally diluting the voting power of citizens or groups of citizens in any future redistricting of North Carolina’s congressional or legislative districts based on their political beliefs, party affiliation, or past votes; and

f. Grant Plaintiffs such other and further relief as the Court deems just and appropriate.

Dated: December 12, 2021

By: /s/ Narendra K. Ghosh

PATTERSON HARKAVY LLP

Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Plaintiffs

ELIAS LAW GROUP LLP

Lalitha D. Madduri**
Jacob D. Shelly**
Graham W. White*
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

Abha Khanna**
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
AKhanna@elias.law

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

Elisabeth S. Theodore*
R. Stanton Jones**
Samuel F. Callahan*
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
elisabeth.theodore@arnoldporter.com

Counsel for Plaintiffs

* Admitted *pro hac vice*

** *Pro hac vice* application pending

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to the following counsel for defendants:

Amar Majmundar
Stephanie A. Brennan
Terence Steed
NC Department of Justice
P.O. Box 629
Raleigh, NC 27602
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
tsteed@ncdoj.gov

*Counsel for the State Board of Elections and
its members*

Phillip J. Strach
Alyssa Riggins
John E. Branch, III
Thomas A. Farr
Nelson Mullins Riley & Scarborough LLP
4140 Parklake Ave., Suite 200
Raleigh, NC 27612
phil.strach@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
john.branch@nelsonmullins.com
tom.farr@nelsonmullins.com

Counsel for the Legislative Defendants

This the 12th day of December, 2021.

/s/ Narendra K. Ghosh
Narendra K. Ghosh

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, INC., et al.,

REBECCA HARPER, et al.,

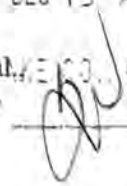
Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House Standing
Committee on Redistricting, et al.

Defendants.

2021 DEC 13 A 9:41

BY  J.E. CO... D.S.G.

57

**MOTION TO INTERVENE AS
PLAINTIFFS
AND TO EXPEDITE CONSIDERATION
OF SAME**

(Three-Judge Court Pursuant to
N.C. Gen Stat. § 1-267.1)

NOW COME Proposed Intervenor Common Cause pursuant to Rule 24(a)(2) of the North Carolina Rules of Civil Procedure moves to intervene as of right as a Plaintiff in this matter, or in the alternative, moves for permissive intervention pursuant to Rule 24(b). Pursuant to Rule 24(c), an unsigned proposed Complaint by Proposed Intervenor is attached hereto as **Exhibit A**. In support of its Motion, Proposed Intervenor shows the Court as follows:

MOTION TO INTERVENE

1. Just last week, on December 8, 2021, the Supreme Court of North Carolina explicitly acknowledged Proposed Intervenor Common Cause's right to intervene in this case. In its Order, the Supreme Court dismissed Proposed Intervenor Common Cause's Petition for Discretionary Review "without prejudice to the plaintiffs-petitioners' right to seek leave from the Superior Court to intervene in the trial court proceedings in the consolidated cases of *Harper v. Hall*, No. 21 CVS 50085 (N.C. Super. Ct., Wake Cnty.) and *North Carolina League of*

Conservation Voters, Inc. v. Hall, No. 21 CVS 015426 (N.C. Super. Ct., Wake Cnty.).” *NAACP v. Berger*, No. 416P21-1, Order at 2 (N.C. Dec. 8, 2021). Thus, as directed by the Supreme Court, Proposed Intervenor Common Cause filed a Notice of Withdrawal in that matter, pursuant to Rule 37(e) of the North Carolina Rules of Appellate Procedure, and immediately seeks leave from this Court to intervene in this action.

2. Proposed Intervenor Common Cause meets all the requirements under Rule 24(a)(2) of the North Carolina Rules of Civil Procedure, which permits intervention as of right “upon timely application”, “[w]hen the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.”

3. *First*, the Motion is timely. The complaints in this action were filed less than a month ago, on November 16 and November 18, 2021, and were consolidated on December 8, 2021. On December 8, 2021, the Supreme Court of North Carolina directed this Court to “hold proceedings necessary to reach a ruling on the merits of plaintiffs’ claims and to provide a written ruling on or before Tuesday, January 11, 2022.” *Harper v. Hall and North Carolina League of Conservation Voters, Inc. v. Hall*, No. 413P21, Order at ¶ 3 (N.C. Dec. 8, 2021). Since the Supreme Court’s Order was issued, no hearings have occurred nor have any briefings on the merits of Plaintiffs’ claims been filed.

4. *Second*, Proposed Intervenor Common Cause has a direct interest relating to the subject of this action. Common Cause is a non-profit which has been a leading advocate for fair elections and redistricting reform across the country for over fifty years. It has members who are registered to vote in every state House and Senate district in North Carolina. Proposed Intervenor

was the plaintiff in *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56 (N.C. Super. Ct. Sept. 3, 2019), which held that extreme partisan gerrymandering violates the guarantee in the North Carolina Constitution’s Free Elections Clause that elections be “conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.” *Id.* at *337-39. Proposed Intervenor has demonstrated a continued interest in protecting the voting and free association rights of its members and all North Carolina voters by filing lawsuits and engaging in education and political advocacy in North Carolina and across the country. These rights are directly threatened by the unconstitutional maps challenged by Plaintiffs in this case.

5. Proposed Intervenor Common Cause’s Complaint seeks, in part, similar relief that Plaintiffs seek arising from the same unconstitutional redistricting plans. Both Plaintiffs and Proposed Intervenor Common Cause request that the Court declare the 2021 redistricting plans unconstitutional and invalid, require Defendants to establish new redistricting plans that comply with the North Carolina Constitution, and otherwise enjoin Defendants from diluting the voting power of North Carolina citizens (which includes Proposed Intervenor’s members). If Defendants prevail, then Proposed Intervenor’s members will also have their right to “substantially equal voting power” and to freely associate and elect their preferred candidates stripped away. *Stephenson v. Bartlett*, 355 N.C. 354, 379 (2002).

6. Furthermore, Proposed Intervenor Common Cause interests relating to this action is distinctly positioned, as Plaintiffs are silent on Defendants’ refusal to undertake a redistricting process that complies with the requirements of Article II Sections 3 and 5 of the state Constitution as set forth by the North Carolina Supreme Court in *Stephenson*. *Stephenson v. Bartlett*, 355 N.C. 354, 358 (2002) (“[T]o ensure full compliance with federal law, legislative districts required by the VRA shall be formed prior to creation of non-VRA districts.”). Only Proposed Intervenor

Common Cause has directly raised Defendants’ willful disregard to comply with state law, which appeared of significant interest to this Court’s understanding of Plaintiffs’ partisan gerrymandering claims. During Plaintiffs’ Preliminary Injunction hearing on December 3, 2021, this Court extensively questioned Defendants on the requirements and compliance of *Stephenson* when drawing state Legislative districts. See **Exhibit B** (Excerpt of Transcript of December 3, 2021 hearing) at T p 51, lines 2-3 (“And the first rule [of *Stephenson*] is you create VRA districts first?”), T p 52, lines 7-9 (“Judge Shirley: Going back to *Stephenson*, I mean, it was a mandate, wasn’t it, that VRA districts be required – created first?”). Thus, the disposition of this action without Proposed Intervenor Common Cause will decide issues raised solely by Common Cause and risks to impair their members’ fundamental rights to vote on equal terms as required by *Stephenson*. *Stephenson*, 355 N.C. at 378 (reaffirming the ability to vote on equal terms is a fundamental right protected under the North Carolina Constitution).

7. *Third*, the existing parties do not adequately represent the Proposed Intervenor’s interests. Like Proposed Intervenor Common Cause, Plaintiffs are seeking to declare the 2021 plans invalid for their discrimination along partisan lines. However, Proposed Intervenor Common Cause *also* seeks to invalidate the 2021 plans because Defendants refused to consider racial data when drawing the 2021 plans, and as a result, drew maps that intentionally discriminate along racial lines, directly violating the North Carolina Supreme Court’s requirement in *Stephenson I* and *II* that the legislators first consider the racial data necessary to ensure satisfaction of the requirements of federal law in drawing state legislative districts. 355 N.C. 354 (2002); 357 N.C (2003). 301. By deliberately engaging in a “race-blind” redistricting process, which is directly contrary to the requirements under state law, Defendants openly discriminate against Proposed

Intervenor Common Cause members who identify as Black and other voters of color in North Carolina.

8. Importantly, North Carolina courts continue to reiterate and instruct Defendants on the need to conduct racial analyses in state Legislative redistricting to avoid a redistricting process that fails to acknowledge the discriminatory interplay between race and politics in North Carolina. *See* Order Supplementing Court Order of October 28, 2019 with Findings and Conclusions Regarding Compliance of Remedial Maps with Federal Voting Rights Act, *Common Cause v. Lewis*, Case No. 18 CVS 014001, slip op. 4 (N.C. Super. Ct. Jan. 22, 2020) (finding the “need for such localized [racially polarized voting] analysis is particularly acute in North Carolina because...the existence and extent of white bloc voting varies widely across different county groupings.”).¹ As indicated by the claims for declaratory judgment in the proposed Complaint, Proposed Intervenor Common Cause has a unique interest, both as an organization and on behalf of its members, in holding Defendants accountable for orchestrating an unlawful redistricting process that failed to consider racial data necessary to undertake the first step required under *Stephenson*. 355 N.C. 354, 358. The questions asked by the Court in oral argument on December 3, 2021, indicate this issue may be raised and considered without any representation for the unique interests of Proposed Intervenor Common Cause, and that a decision would thus impair or impede Common Cause’s ability to protect these interests.

9. Alternatively, Proposed Intervenor Common Cause also meets the requirements for permissive intervention pursuant to Rule 24(b)(2) of the North Carolina Rules of Civil Procedure. The Court should grant permissive intervention where an applicant shows that their “claim or defense and the main action have a question of law or fact in common.” N.C.R. Civ. P. 24(b)(2).

¹ Available at <https://www.brennancenter.org/sites/default/files/2020-01/2020-01-22-Order%20Supplementing%2010.28.2019%20Order.pdf>.

As discussed above and in the proposed Complaint, Proposed Intervenor’s claims—that Defendants’ proposed maps are unconstitutional, invalid, and violate the rights of voters—present clear questions of law and fact in common with the pending action. The North Carolina Supreme Court has unequivocally recognized that Proposed Intervenor should not be prejudiced in seeking leave to intervene in these consolidated cases. *NAACP v. Berger*, No. 416P21-1, Order at 2 (N.C. Dec. 8, 2021).

10. Finally, “[i]n exercising its discretion, the court shall consider whether the intervention dispute will unduly delay or prejudice the adjudication of the rights of other parties.” N.C.R. Civ. P. 24(b)(2). This intervention will neither unduly delay nor prejudice the any other parties’ rights given the common questions of law and fact, and because Proposed Intervenor Common Cause is seeking intervention immediately after the North Carolina Supreme Court’s December 8 Order directing this Court to hold proceedings on the merits of Plaintiffs’ claims, when this Court has not yet established briefing deadlines or hearing dates.

11. Proposed Intervenor Common Cause also represents that it is willing and able to meet any Scheduling Order set forth by this Court in this matter.

12. Counsel for the Plaintiffs and for the Defendants have been notified of this Motion. The *N.C. League of Conservation Voters* Plaintiffs take no position on the motion to intervene. The *Harper* Plaintiffs take no position on the motion to intervene but oppose anything that would cause any delay in the case schedule. As of 8:30 AM on December 13, 2021, Defendants have not responded regarding their position.

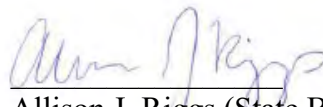
MOTION TO EXPEDITE

13. Proposed Intervenor Common Cause also respectfully requests that the Court resolve the Motion as expeditiously as possible to ensure that Proposer Intervenor Common

Cause’s fundamental rights in this action, both as an organization and on behalf of its members, can be properly heard in conjunction with Plaintiffs and are not infringed. The questions raised by the Court in oral argument on December 3, 2021, as to Defendants constitutional duty to undertake the express mandates of *Stephenson*, are central to the interests of Proposed Intervenor Common Cause. North Carolina courts have granted motions to expedite intervention in previous partisan gerrymandering cases. *See Harper v. Lewis*, 2019 N.C. Super. LEXIS 122, at *2-3 (Oct. 28, 2019). In light of the extraordinary public interest in this case, and the North Carolina Supreme Court’s Order for a judgment on the merits to issue no later than January 11, 2022, *Harper v. Hall* and *North Carolina League of Conservation Voters, Inc. v. Hall*, No. 413P21, Order at ¶ 3 (N.C. Dec. 8, 2021), justice requires that that Proposed Intervenor Common Cause’s Motion be granted on an expedited basis.

WHEREFORE, Proposed Intervenor respectfully requests that the Court grant its Motion to Intervene as a matter of right, or in the alternative with permission of the Court, and an expedited consideration of this Motion.

Respectfully submitted this 13th day of December, 2021.



Allison J. Riggs (State Bar No. 40028)

allison@southerncoalition.org

Hilary H. Klein (State Bar No. 53711)

hilaryhklein@scsj.org

Mitchell Brown (State Bar No. 56122)

Mitchellbrown@scsj.org

Katelin Kaiser (State Bar No. 56799)

Katelin@scsj.org

Jeffrey Loperfido (State Bar No. 52939)

jeffloperfido@scsj.org

SOUTHERN COALITION FOR SOCIAL JUSTICE

1415 W. Highway 54, Suite 101
Durham, NC 27707
Telephone: 919-323-3909
Facsimile: 919-323-3942

J. Tom Boer* (D.C. Bar No. 469585;
CA Bar. No. 199563)
tom.boer@hoganlovells.com
Olivia T. Molodanof* (CA Bar No.
328554)
olivia.molodanof@hoganlovells.com
**Pro Hac Vice* Motion filed concurrently
with this Motion

HOGAN LOVELLS US LLP
3 Embarcadero Center, Suite 1500
San Francisco, California 94111
Telephone: 415-374-2300
Facsimile: 415-374-2499

Counsel for Proposed Intervenor

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day submitted a copy of the foregoing MOTION TO INTERVENE AND EXPEDITE CONSIDERATION OF SAME in the above titled action by mail and/or electronic mail, in the manner requested, to the following parties:

David J. Bradford
JENNER & BLOCK LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schuaf
Karthik P. Reddy
Urja Mittal
JENNER & BLOCK LLP
1099 New York Avenue, NW, Suite 900
Washington, D.C. 20001
shirsch@jenner.com
zschauf@jenner.com

Stephen D. Feldman
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27501
sfeldman@robinsonbradshaw.com

Adam K. Doerr
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
ROBINSON, BRADSHAW & HINSON, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for North Carolina League of
Conservation Voters, INC., et al. Plaintiffs*

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Marc E. Elias
Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
ELIAS LAW GROUP LLP
10 G. Street NE, Suite 600
Washington, D.C. 20002
MElias@elias.law
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

Abha Khanna
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
AKhanna@elias.law

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
ARNOLD AND PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue NW
Washington, DC 20001
elisabeth.theodore@arnoldporter.com
Counsel for Rebecca Harper, et al. Plaintiffs

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
NELSON MULLINS RILEY &
SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, North Carolina 27612
phillip.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
alyssa.riggins@nelsonmullins.com

Mark E. Braden
Katherine McKnight
Richard Raile
BAKER HOSTETLER LLP
1050 Connecticut Ave NW
Suite 1100
Washington, DC 20036
mBraden@bakerlaw.com
kmcknight@bakerlaw.com
rraile@bakerlaw.com

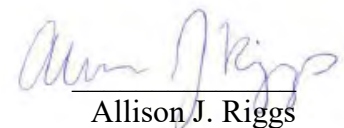
Counsel for Legislative Defendants

Terence Steed
Special Deputy Attorney General
Stephanie A. Brennan
Special Deputy Attorney General
Amar Majmundar
Senior Deputy Attorney General

NC DEPARTMENT OF JUSTICE
P.O. Box 629
Raleigh, NC 27602
tsteed@ncdoj.gov
sbrennan@ncdoj.gov
amajmundar@ncdoj.gov

Counsel for the State Defendants

This the 13th day of December, 2021.



Allison J. Riggs

EXHIBIT A

Complaint of Proposed Intervenor Common Cause

Exhibit to Motion to Intervene by Proposed Intervenor Common Cause

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

21 CVS 015426

COMMON CAUSE,

Plaintiff,

v.

PHILIP E. BERGER *in his official capacity as President Pro Tempore of the North Carolina Senate*; TIMOTHY K. MOORE *in his official capacity as Speaker of the North Carolina House of Representatives*; RALPH E. HISE, JR., WARREN DANIEL, PAUL NEWTON, *in their official capacities as Co-Chairmen of the Senate Committee on Redistricting and Elections*; DESTIN HALL, *in his official capacity as Chairman of the House Standing Committee on Redistricting*; THE STATE OF NORTH CAROLINA; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, *in his official capacity as Chair of the State Board of Elections*; STELLA ANDERSON, *in her official capacity as Secretary of the State Board of Elections*; STACY EGGERS IV, *in his official capacity as Member of the State Board of Elections*; JEFF CARMON III, *in his official capacity as Member of the State Board of Elections*; TOMMY TUCKER, *in his official capacity as Member of the State Board of Elections*; KAREN BRINSON BELL, *in her official capacity as Executive Director of the State Board of Elections*,

Defendants.

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

**(Three-Judge Court Pursuant to N.C. Gen.
Stat. § 1-267.1)**

Pursuant to N.C.G.S. § 1-253 et seq., and Rules 8, 24, and 57 of the North Carolina Rules of Civil Procedure, Plaintiff Common Cause, through counsel, hereby files this Complaint for declaratory judgment and for injunctive relief.

I. PRELIMINARY STATEMENT

1. After drawing one unconstitutional redistricting plan after another in the last decade,¹ the North Carolina General Assembly has acted in an unlawful and unconstitutional manner by defiantly ignoring clear direction from the North Carolina Supreme Court on how to draw constitutional maps and once again engaging in extreme partisan gerrymandering. North Carolina state Legislative and Congressional districts are once again extreme outliers, do not reflect or allow to be reflected the will of North Carolina voters, and entrench the power of the current Legislative majority in a manner that will be certain to withstand even high turnout elections where voters widely prefer Democratic candidates. At core, North Carolina’s democracy is critically subverted by these actions, and they are inconsistent with the North Carolina Constitution.

¹ See *Covington v. North Carolina*, 316 F.R.D. 117, 124 (M.D.N.C. 2016), *summarily aff’d*, 137 S. Ct. 2211 (2017) (per curiam) (finding state legislative districts as enacted in S.L. 2011-402 and S.L. 2011-404 violated the Equal Protection Clause of the Fourteenth Amendment); *Covington v. North Carolina*, 283 F. Supp. 3d 410, 434-35 (M.D.N.C. 2018) (finding state legislative districts as enacted in S.L. 2017-207 and S.L. 2017-208 violated the Equal Protection Clause of the Fourteenth Amendment); *North Carolina State Conference of NAACP Branches v. Lewis*, No. 18 CVS 002322, slip op. at 2 (N.C. Super. Ct. Nov. 2, 2018) (finding state legislative districts as enacted in S.L. 2017-207 and S.L. 2017-208 violated Article II, Section 5 of the North Carolina Constitution); *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super LEXIS 56, at *333, *346, *361–62 (N.C. Super. Ct. Sept. 3, 2019) (finding state legislative districts as enacted in S.L. 2017-207 and S.L. 2017-208 violated Article I, Section 10, Article I, Section 12, Article I, Section 14, and Article 1, Section 19 of the North Carolina Constitution); *Harris v. McCrory*, 159 F. Supp. 3d 600, 622 (M.D.N.C. 2016), *aff’d sub nom.*, *Cooper v. Harris*, 137 S. Ct. 1455 (2017) (finding Congressional districts as enacted in S.L. 2011-403 violated the Equal Protection Clause of the Fourteenth Amendment); *Harper v. Lewis*, No. 19 CVS 012667, 2019 N.C. Super. LEXIS 122, at *18 (N.C. Super. Ct. Oct. 28, 2019) (order granting preliminary injunction) (finding Congressional districts as drawn in S.L. 2016-1 violated Article I, Section 10, Article I, Section 12, Article I, Section 14, and Article I, Section 19 of the North Carolina Constitution).

2. But the harm does not end here. The incontrovertible evidence of bad actions and bad faith by the current Legislative majority will harm voters of color too. By categorically prohibiting the formal consideration of any racial data in drawing or evaluating districts that would allow legislators to prevent dilution, but acknowledging the obvious familiarity that legislators have with the state’s demography that would still allow them to target these voters, the North Carolina General Assembly knowingly destroyed functioning crossover districts that enabled the election of candidates of choice of voters of color. While such districts may not always be compelled by the Voting Rights Act (“VRA”), the destruction of those districts violates North Carolina’s equal protection guarantees. To be clear, this case is not a Voting Rights Act case. Plaintiff Common Cause solely brings state law claims under the North Carolina Constitution. This case is one of intentional racial discrimination in violation of the North Carolina Constitution, unconstitutional partisan gerrymandering in violation of the North Carolina Constitution, and the legal need for a reckoning with a General Assembly that has no respect for the rule of law, the rulings of the North Carolina Supreme Court, or co-equal judicial institutions at all.

3. Common Cause files this action to challenge the state House, Senate, and federal Congressional maps (“2021 Enacted Maps”) as unconstitutional and invalid, and calls upon this Court to enjoin the 2021 Enacted Maps and to establish new constitutional plans if the General Assembly fails to do so.

4. From the beginning of this process, the Defendant Chairs of the Senate Committee on Redistricting and Elections and the House Committee on Redistricting (the “Redistricting Chairs” of the “Redistricting Committees”) have, despite warnings from citizens and legislators of color, stated their intention to contravene the North Carolina Constitution, as interpreted by the North Carolina Supreme Court *Stephenson v. Bartlett*, by prohibiting the formal consideration of

racial data and failing to undertake any racially polarized voting analyses to understand how district lines would affect minority voting strength and representation. *See Stephenson v. Bartlett*, 355 N.C. 354 (2002) (*Stephenson I*) and *Stephenson v. Bartlett*, 357 N.C. 301 (2003) (*Stephenson II*). They did this while acknowledging it would be infeasible to prevent legislators from applying their pre-existing knowledge of North Carolina’s demographic and political make-up (and by extension doing so in a way that would harm voters of color) when devising districts. The Redistricting Committees have approved redistricting criteria formally prohibiting any use of racial data, and the Redistricting Chairs have stated that they disallowed consideration of any maps drawn that formally, lawfully and properly utilize racial data, despite their legal obligations to do so. These actions directly contravene the North Carolina Constitution, including: (1) the requirements of the North Carolina Constitution, which affirms the supremacy of federal law under Sections 3 and 5 of Article I; and (2) the requirement that legislators first consider the data necessary to ensure satisfaction of the requirements of federal law in drawing state legislative districts, as explained in *Stephenson I* and *II*. They did so in an unnecessarily chaotic process that stifled public comment in an apparent effort to capitalize on the delay in 2020 Census data and evade judicial review as they did last cycle, which allowed the party currently in power to obtain and maintain a veto-proof supermajority for most of the last decade due to unlawful racial gerrymanders.² These tactics should not be tolerated again.

5. Plaintiff Common Cause brings this Declaratory Judgment action seeking a judicial determination that their members and voters they serve are entitled to a redistricting process that adheres to the requirements of Article II, Sections 3 and 5 of the North Carolina Constitution and

² *See Covington v. North Carolina*, 316 F.R.D. 117, 124 (M.D.N.C. 2016), *summarily aff’d*, 137 S. Ct. 2211 (2017) (per curiam).

that the use of purportedly “race-blind” redistricting criteria violates North Carolina law and unlawfully harms voters of color. Defendants Berger, Moore, Hise, Daniel, and Hall (“Legislative Defendants”) intentionally orchestrated an unlawful redistricting process that contravened the requirements of the state Constitution as set forth in *Stephenson I* and *II*. The use of purportedly “race-blind” redistricting criteria in defiance of these requirements, and Legislative Defendants’ failure to conduct any analysis that would prevent vote dilution for voters of color, violates the Equal Protection Clause, Article I, Section 19, of the North Carolina Constitution.

6. Finally, Legislative Defendants have once again persisted in drawing and enacting state Legislative and Congressional maps that are extreme partisan gerrymanders, which intentionally and harmfully dilute the votes of North Carolina’s Democratic voters, in violation of the Free Elections Clause, Equal Protection Clause, and Freedom of Speech and Freedom of Assembly Clauses guaranteed under Article I, Sections 10, 12, 14, and 19 of the North Carolina Constitution. The political analysis of the 2021 Enacted Maps reveal that the purported non-partisan drafting of these maps is implausible given expert analysis of millions of simulated maps that do not use partisan data. Such ensembles of non-partisan maps do not produce the extreme partisan outcomes seen in the 2021 Enacted Maps, and analysis performed by Professor Jonathan Mattingly of Duke University demonstrates that the 2021 Enacted Maps are astonishingly durable and non-responsive to political waves (changes in the state partisan vote shares). Legislative Defendants’ plans will heavily and consistently favor Republican candidates and the Republican Party even if the will of North Carolina’s voters does not.

7. Without judicial intervention, Legislative Defendants’ actions will cause irreparable harm to the rights of Plaintiff Common Cause, its members and the voters it serves, as well as the rights of all North Carolina voters to participate in free elections. The process pursued

by the Redistricting Chairs as described above cannot, as a matter of law, comply with the North Carolina Constitution. The 2021 Enacted Maps are undeniably extremely skewed in favor of the Legislative Defendants’ party. North Carolinians are entitled to have their rights enforced by the courts of this State, and should not have to endure yet another set of elections under unconstitutional maps.

II. JURISDICTION AND VENUE

8. Jurisdiction is proper in this Court pursuant to N.C.G.S. § 1-253 et seq. (“Declaratory Judgment Act”), N.C.G.S. § 7A-245(a)(4), and Article 26A of Chapter 1 of the General Statutes.

9. This Court has the power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed, and such declaration shall have the force and effect of a final judgment or decree. *See* N.C.G.S. § 1-253.

10. The purpose of the Declaratory Judgment Act is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.

11. An action under the Declaratory Judgment Act may be used to declare rights of persons. N.C.G.S. § 1-253.

12. The Declaratory Judgment Act is to be liberally construed and administered. N.C.G.S. § 1-264.

13. Under N.C.G.S. § 1-81.1, the exclusive venue for this action is the Wake County Superior Court.

14. Under N.C.G.S. § 1-267.1, a three-judge court must be convened because this action challenges the validity of redistricting plans enacted by the General Assembly.

15. Removal to federal court is not proper in this matter because all of Plaintiff’s causes of action challenge Defendants’ enacted maps based upon North Carolina Constitutional law, the

matters in dispute do not arise under or require resolution of federal law, and there is no diversity of jurisdiction. This is a suit involving challenging the enactment of state redistricting law, properly brought in this Court.

16. An actual, justiciable controversy exists between Plaintiff and Defendants at present.

III. PARTIES

Plaintiff

17. **Plaintiff Common Cause** is a non-profit nonpartisan democracy organization with over 1.5 million members and local organizations in 30 states, including North Carolina. Common Cause has over 25,000 members, staff and supporters in every district challenged herein of the 2021 Enacted Maps. Since its founding by John Gardner in 1970, Common Cause has been dedicated to fair elections and making government at all levels more representative, open, and responsive to the interests of ordinary people. “For the past twenty-five years, Common Cause has been one of the leading proponents of redistricting reform.”³ Common Cause also assists voters in navigating the elections process, provides resources for voters to determine their districts and their polling locations, and mobilizes voters to engage in political advocacy. Some of the voters assisted by Common Cause identify as voters of color and/or habitually vote for candidates of the Democratic Party. Unfair and discriminatory redistricting directly frustrates and impedes Common Cause’s core missions of making government more responsive to the interests of communities by diminishing the voices of the voters Common Cause works to engage and forces Common Cause to divert resources toward directly combatting the ill effects of unlawful redistricting. Common

³ JONATHAN WINBURN, THE REALITIES OF REDISTRICTING: FOLLOWING THE RULES AND LIMITING GERRYMANDERING IN STATE LEGISLATIVE REDISTRICTING 205 (2008)..

Cause has long advocated for redistricting reform, whether executed by Republicans or Democrats, and for an end to partisan gerrymandering in North Carolina. Partisan gerrymandering frustrates and impedes Common Cause’s core mission of increasing voter engagement and making government officials accountable to voters because this practice preordains election results, making voters less likely or willing to engage and government officials less responsive to constituents. It also frustrates and impedes Common Cause’s goal of advocating for redistricting reform because the beneficiaries of gerrymandered plans are unlikely to adopt meaningful redistricting reform. Common Cause brings this action on its own behalf and on behalf of its members and supporters who are registered voters in North Carolina. These members and supporters include registered voters in every county in North Carolina, registered Democrats and/or voters who support Democratic candidates in each of the districts alleged to be partisan gerrymanders herein, and voters who identify as Black in each of the effective districts for voters of color that were intentionally and unlawfully dismantled by the 2021 Enacted Maps as alleged herein. Each of these members and supporters have a right to representation in the State Legislature that complies with the North Carolina Constitution, a right to be free of intentional discrimination, and a right to free association.

Defendants

18. **Defendant Philip E. Berger** is a member of the North Carolina Senate, having been elected to that office by the voters residing in District 30. Mr. Berger serves as the President *Pro Tempore* of the North Carolina Senate. Mr. Berger is sued in his official capacity.

19. **Defendant Timothy K. Moore** is member of the North Carolina House of Representatives, having been elected to that office by the voters residing in District 111. Mr. Moore

serves as the Speaker of the North Carolina House of Representatives. Mr. Moore is sued in his official capacity.

20. **Defendant Ralph E. Hise, Jr.** is a member of the North Carolina Senate, having been elected to that office by the voters residing in Senate District 47. Mr. Hise serves as the Senate Deputy President *Pro Tempore* and the Chairman of the Senate Redistricting and Elections Committee. Mr. Hise is sued in his official capacity.

21. **Defendant Warren Daniel** is a member of the North Carolina Senate, having been elected to that office by the voters residing in District 46. Mr. Daniel serves as the Chairman of the Senate Redistricting and Elections Committee. Mr. Daniel is sued in his official capacity.

22. **Defendant Paul Newton** is a member of the North Carolina Senate, having been elected to that office by the voters residing in District 36. Mr. Newton serves as the Chairman of the Senate Redistricting and Elections Committee. Mr. Newton is sued in his official capacity.

23. **Defendant Destin Hall** is a member of the North Carolina House of Representatives, having been elected to that office by voters residing in District 87. Mr. Hall serves as the Chairman of the House Redistricting Committee. Mr. Hall is sued in his official capacity.

24. Defendants Hise, Daniel, Newton, and Hall together herein shall be referred to as the “**Redistricting Chairs**” and, together with Defendants Moore and Berger, the “**Legislative Defendants.**”

25. **Defendant State of North Carolina** is one of the fifty sovereign states in the United States of America. Article I of the State’s Constitution establishes, “principles of liberty and free government,” which the General Assembly and its members must honor in enacting legislation for the State and its citizens.

26. **Defendant North Carolina State Board of Elections** is the agency responsible for the administration of North Carolina elections, including issuing rules and regulations for the conduct of all elections in the State.

27. **Defendant Damon Circosta** is the Chairman and a member of the North Carolina State Board of Elections. Mr. Circosta is sued in his official capacity.

28. **Defendant Stella Anderson** is the Secretary and a member of the North Carolina State Board of Elections. Ms. Anderson is sued in her official capacity.

29. **Defendant Stacy Eggers IV** is a member of the North Carolina State Board of Elections. Mr. Eggers is sued in his official capacity.

30. **Defendant Jeff Carmon II** is a member of the North Carolina State Board of Elections. Mr. Carmon is sued in his official capacity.

31. **Defendant Tommy Tucker** is a member of the North Carolina State Board of Elections. Mr. Tucker is sued in his official capacity.

32. **Defendant Karen Brinson Bell** is the Executive Director of the North Carolina State Board of Elections. Ms. Brinson Bell is sued in her official capacity.

33. Defendants the North Carolina State Board of Elections, Circosta, Anderson, Eggers, Carmon, Tucker, and Brinson Bell shall together herein be referred to as the “**SBE Defendants,**” and, together with the State of North Carolina, the “**State Defendants.**”

IV. FACTUAL ALLEGATIONS

A. North Carolina Constitutional Requirements in Redistricting.

34. The North Carolina Constitution provides that “the General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment of Senators among those

districts” and “shall revise the representative districts and the apportionment of Representatives among those districts.” N.C. Const. art. II, §§ 3, 5.

35. The State Constitution specifically enumerates four limitations upon the redistricting and reapportionment authority of the General Assembly, including that:

- a. each Senator and Representative shall represent, as nearly as possible, an equal number of inhabitants;
- b. each senate and representative district shall at all times consist of contiguous territory;
- c. no county shall be divided in the formation of senate or representative districts (the “Whole County Provision”); and
- d. once established, the senate and representative districts and the apportionment of Senators and Representatives shall remain unaltered until the next decennial census of population taken by order of Congress.

See N.C. Const. art. II, §§ 3, 5.

36. In addition to these requirements, Article I, Section 3 of the North Carolina Constitution provides that the rights of the people of North Carolina “shall be exercised in pursuance of law and consistently with the Constitution of the United States,” and Article I, Section 5 of the North Carolina Constitution prohibits a law or ordinance in North Carolina from contravening the federal Constitution. Collectively, these provisions “delineate[] the interplay between federal and state law[.]” *Stephenson I*, 355 N.C. at 370. Finally, Article I, Section 19 guarantees North Carolinians equal protection of the laws and freedom from discrimination by the State on the basis of race, color, religion, or national origin, and Article I, Section 10 provides that “All elections shall be free.”

37. Among the federal requirements applicable to redistricting is compliance with the federal one-person one-vote requirements under the Fourteenth Amendment and the Voting Rights Act (“VRA”), as amended and as proscribed under the Fifteenth Amendment. *Stephenson I*, 355 N.C. at 363-64. Accordingly, *North Carolina law* prohibits any voting qualification or prerequisite that impairs or dilutes, on account of race or color, a citizen’s opportunity to participate in the political process and to elect representatives of their choice. *Id.* This requirement does not command a state to adopt any particular legislative reapportionment plan, but rather prevents the enforcement of redistricting plans having the purpose or effect of diluting the voting strength of legally protected minority groups. *Stephenson I*, 355 N.C. at 364.

38. In *Stephenson v. Bartlett*, the North Carolina Supreme Court sought to harmonize the different North Carolina Constitutional requirements imposed on the redistricting process. 355 N.C. 354; *see also Stephenson II*, 357 N.C. 301. The court developed a methodology for grouping counties together into “clusters” that it held would minimize the splitting of counties, in recognition of the Whole County Provision, while satisfying one-person, one-vote requirements.

39. Importantly, *Stephenson* expressly mandates that “to ensure full compliance with federal law, legislative districts required by the VRA shall be formed prior to the creation of non-VRA districts.” *Stephenson I*, 355 N.C. at 383. In other words, first, any and all districts that are required under the VRA (which requires that districts be drawn without the intent or effect of depriving protected voters of an equal opportunity to elect their candidates of choice) must be drawn.⁴ Only after an analysis is performed to ascertain what districts are compelled by the VRA,

⁴ Importantly, Section 2 of the Voting Rights Act prohibits intentional vote dilution (or intentional racial discrimination in redistricting). Likewise, Article I, Section 19 of the North Carolina Constitution prohibits intentional racial discrimination, *see Holmes v. Moore*, 270 N.C. App. 7, 33 (2020), which would prohibit intentional vote dilution in redistricting. Thus, while the *Stephenson* court referenced the VRA, because part of the VRA is identical in purpose and direction to Article I, Section 19, that part of *Stephenson* cannot be read logically to not also incorporate the requirements incumbent on the legislature under the State’s equal protection guarantees. To put it another way, even if the Section 2 effects test (as opposed to its prohibition on intentional

and those districts are drawn, may any work be done to draw clustered districts that harmonize and maximize compliance with North Carolina’s Whole County Provision and equal protection guarantees of population equality. “Thus, the process established by [the North Carolina Supreme] Court in *Stephenson I* and its progeny requires that, in establishing legislative districts, the General Assembly first must create all necessary VRA districts, single-county districts, and single counties containing multiple districts.” *Dickson v. Rucho*, 368 N.C. 481, 532 (2015), *vacated on other grounds*, 137 S. Ct. 2186 (2017).

40. The trial court in *Stephenson* also instructed that VRA districts should be formed where, “due to demographic changes in population there exists the required [*Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986)] preconditions,” a finding that was affirmed by the North Carolina Supreme Court. *Stephenson II*, 357 N.C. at 307. Accordingly, to comply with *Stephenson*, the Legislature must evaluate demographic changes to determine whether there exist the required *Gingles* preconditions. This includes, at the least, considering racial data and, where legislators and members of the public have indicated that there may be VRA concerns, conducting a regionally-focused Racially Polarized Voting (“RPV”) study to determine if there is legally significant racially polarized voting. *See, e.g., Thornburg v. Gingles*, 478 U.S. 30, 55–58 (1986). Again, to be clear, there are no allegations or causes of action in this case of any specific districts compelled by the VRA. Plaintiff need not allege a Section 2 claim to show that the Legislature admittedly and unapologetically flouted the North Carolina Supreme Court’s instruction by failing

racial discrimination) did not compel ANY districts under the VRA (and Plaintiff has not alleged in this case that the VRA effects test compels any such districts), the Legislature would still be obligated under the first step of *Stephenson* to examine racial data to ensure it avoids violations of Article I, Section 19. Such a reading of *Stephenson* is reinforced by the harmonizing intent expressly indicated by the North Carolina Supreme Court. *Stephenson I*, 355 N.C. at 393.

to consider any racial data or conduct any RPV analysis, even when made aware of harmful effects on Black voters.

41. In North Carolina, “[a]ll political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.” N.C. Const. art. I, § 2. Here, “the object of all elections is to ascertain, fairly and truthfully, the will of the people – the qualified voters,” and “the machinery provided by the law to aid in attaining the main object – the will of the voters . . . should not be used to defeat the object which they were intended to aid.” *Hill v Skinner*, 169 N.C. 405, 415 (1915) (quoting *R.R. v. Comrs.*, 116 N.C. 563, 568 (1895)). The Free Elections Clause in Article I, Section 10 of the North Carolina Constitution provides that “[a]ll elections shall be free,” and thus requires that elections be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. *See Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56, at *337 (N.C. Super. Ct. Sept. 3, 2019).

42. Partisan gerrymandering at its most basic level involves drawing legislative districts “to subordinate adherents of one political party and entrench a rival party in power,” with the effect of dismantling the fundamental precept of democracy that “voters should choose their representatives, not the other way around.” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 791, 824 (2015). It does so by systematically “packing” and “cracking” voters likely to support the disfavored party to dilute their voting power overall. *See Gill v. Whitford*, 138 S. Ct. 1916, 1935–41 (Kagan, J., concurring). Extreme partisan gerrymandering entrenches the political party in power, serving the interest of that political party over the public good, and systematically diluting and devaluing the votes of some citizens compared to others based on political affiliation. *See Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super.

LEXIS 56, at *339. Overall, extreme partisan gerrymandering prevents elections from ascertaining, fairly and truthfully, the will of the people, and thus violates the Free Elections Clause. *Id.*

43. And even more insidiously, in a state like North Carolina, where the Southern Strategy has been effective, and it is widely known that Black voters overwhelmingly prefer Democratic candidates, partisan gerrymandering is an act of racial discrimination in violation of the State Constitution. *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 222-24. Race and politics are inextricably intertwined in this State, and that is all the more reason for courts to reign in extreme partisan gerrymandering.

B. The Legislative Defendants Orchestrated a Redistricting Process that Contravenes Applicable Law, Causing an Inevitable Deprivation of Voters’ Rights.

1. The Redistricting Committees’ Adopted Criteria Contravene State Constitutional Requirements.

44. On Thursday, August 5, 2021, the Senate Committee on Redistricting and Elections convened a Joint Meeting of the Redistricting Committees to begin discussions about the redistricting process.⁵ Following this meeting, staff member Erika Churchill distributed to joint committee members the legislative redistricting criteria ordered by the North Carolina Superior Court for Wake County in its September 3, 2019 Judgment in the matter *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56 (the “2019 Criteria”).⁶

45. The 2019 Criteria set forth by the court specifically required that new maps comply with the VRA and other federal requirements concerning the racial composition of districts, and

⁵ *Joint Meeting of the Senate Redistricting and Elections Committee and the House Redistricting Committee to Begin Discussion on the Redistricting Process*, Aug. 5, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-05-2021/6683.pdf>.

⁶ E-mail from Erika Churchill, Staff Attorney, Legislative Analysis Division, N.C. General Assembly, to Joint Committee Members (Aug. 5, 2021).

required within 14 days of the order that the parties to submit briefing and expert analysis on whether VRA districts were required, including consideration of whether the minimum Black Voting Age Population “BVAP” thresholds were met to implicate the VRA. *Id.* at *417.

46. On Monday, August 9, 2021 the Redistricting Chairs released the “2021 Joint Redistricting Committee Proposed Criteria.”⁷ Contrary to the requirements of Article I, Sections 3 and 5 of the North Carolina Constitution, and the aforementioned court orders in *Stephenson v. Bartlett* and *Common Cause v. Lewis*, these criteria outright prohibited *all* formal use of racial data in redistricting, with no exceptions permitting the use of racial data to prevent vote dilution or comply with the VRA:

Racial Data. Data identifying the race of individuals or voters *shall not* be used in the construction or consideration of districts in the 2021 Congressional, House and Senate plans.⁸

47. The Redistricting Committees received public comment on the proposed criteria on Tuesday, August 10, 2021. Among those providing public comment were Plaintiff’s Counsel Allison J. Riggs, who described how the criteria prohibiting use of racial data was contrary to applicable law:

It is neither appropriate nor required to draw districts race-blind. As long as redistricting has occurred, it has been a tool used to harm voters of color. Beyond compliance with the VRA, it is entirely appropriate to advance race-equity to consider race in the drawing of districts, to ensure voters of color are not being packed or cracked. Additionally, in *Covington v. North Carolina*, this legislative body tried the same thing with respect to race-blind redistricting. A three-judge panel, including republican and democratic appointees, and a unanimous supreme court, rejected your race-blind remedial drawing of two senate districts and two

⁷ 2021 Joint Redistricting Committee Proposed Criteria, North Carolina General Assembly Joint Redistricting Committee, Aug. 9, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-09-2021/2021%20Joint%20Redistricting%20Committee%20Plan%20Proposed%20Criteria.pdf>.

⁸ *Id.* (emphasis in original).

house districts. In fact there is apparently not a federal judge out there who agrees with this approach and we urge you to abandon that criteria.⁹

48. On Thursday, August 12, 2021, the Redistricting Committees met to consider the proposed redistricting criteria and any amendments thereto. During debate on the proposed criteria, Senator Dan Blue stated that the court in *Stephenson* held that the first step of redistricting is determining whether districts are required to comport with the VRA and queried how this would be accomplished without the consideration of racial data. The Redistricting Chairs reiterated the view that consideration of racial data to evaluate whether VRA districts were necessary was not required but failed to explain how VRA compliance would be assessed absent that data.

49. Defendant Newton indicated that if any members presented evidence or new studies of RPV in North Carolina, the Chairs would be willing to examine that evidence.¹⁰

50. Defendant Daniel then proposed an amendment providing that “[t]he Committee will draw districts that comply with the Voting Rights Act,”¹¹ again failing to explain how this would or could be done without racial data or any analysis of racially polarized voting patterns. This amendment was adopted into the final criteria.

51. Senator Blue then proposed an amendment titled “Voting Rights Act,” adding the following criteria:

⁹ NCGA Redistricting, *2021-08-10 Committee (Joint)*, YOUTUBE, <https://youtu.be/QFA6QNpqWVlk?t=2084> (Aug. 10, 2021).

¹⁰ NCGA Redistricting, *2021-08-12 Committee (Joint)*, YOUTUBE, <https://youtu.be/gSm2OhE7Slk?t=10321> (Aug. 12, 2021).

¹¹ *Id.* at 2:58:00; *Amendment to Proposed Criteria #4 (Racial Data) Offered by Senator Daniel*, North Carolina Joint Redistricting Committee, Aug. 12, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-12-2021/Adopted%20Amendments/Racial%20Data.Daniel.pdf>.

As condemned by the United States Supreme Court in *Cooper v. Harris* and *Covington v. State of North Carolina*, African-Americans shall not be packed into any grouping or district to give partisan advantage to any political party.¹²

52. During debate on this amendment, Senator Blue again queried how it would be possible to comply with the VRA without consideration racial data. Senator Clark also repeated these concerns. In response, Defendant Daniel erroneously advised that prior case law, including a 2019 decision, in North Carolina did not require the use of racial data.¹³ The amendment offered by Senator Blue failed.

53. Upon information and belief, Defendant Daniel referenced the September 3, 2019 Judgment of the North Carolina Superior Court for Wake County in the matter *Common Cause v. Lewis*, Case No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56, to contend that racial data is not required to ensure compliance with the VRA this redistricting cycle. The court held no such thing. In *Common Cause v. Lewis*, the Superior Court struck down 2017 state Legislative plans as unlawful partisan gerrymanders that violated the Free Elections Clause of the North Carolina Constitution, Article I, Section 10. *Id.* at *333. In its analysis, the court explicitly held that “[a]ny Remedial Maps must comply with the VRA and other federal requirements concerning the racial composition of districts,” and afforded the parties the opportunity to “submit briefing . . . on whether the *Gingles* factors are met in particular counties and county groupings and/or the minimum BVAP needed in particular counties and county groupings for African-Americans to be able to elect candidates of their choice” *Id.* at *407–08. In other words, the court in *Common*

¹² *Amendment to Proposed Criteria (Voting Rights Act) Offered by Senator Blue*, North Carolina Joint Redistricting Committee, Aug. 12, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-12-2021/Proposed%20Amendments/Voting%20Rights%20Act.Amendment.pdf>.

¹³ NCGA Redistricting, 2021-08-12 Committee (Joint), YOUTUBE, <https://youtu.be/gSm2OhE7Slk?t=13039>, (Aug. 12, 2021).

Cause v. Lewis explicitly required the same analysis that Legislative Defendants are unlawfully chose to skip this cycle.

54. Furthermore, in subsequent orders addressing the remedial maps enacted in *Common Cause v. Lewis*, the court noted that the “need for such localized [RPV] analysis is particularly acute in North Carolina because . . . the existence and extent of white bloc voting varies widely across different county groupings.” Order Supplementing Court Order of October 28, 2019 with Findings and Conclusions Regarding Compliance of Remedial Maps with Federal Voting Rights Act at 4, *Common Cause v. Lewis*, Case No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56. Accordingly, any assertions that courts have definitely held there is no racially polarized voting in North Carolina, and that no RPV analyses are therefore necessary, are both factually and legally incorrect.

55. Hypothetically, it could be that that no districts were compelled by the effects test under Section 2 of the Voting Rights Act, but the Legislature’s process would still be problematic for two reasons:

- a. First, willful ignorance of racial data invites the destruction of effective crossover districts, and such willful exclusion of racial data suggests the consequences are intended – undermining Black voting strength. The intentional destruction of effective crossover districts, even though such districts are not compelled by the VRA, violates equal protection guarantees such as those in Article I, Section 19. *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009).
- b. Second, regardless of whether any districts are actually compelled by the effects test of the VRA, the North Carolina Supreme Court implicitly

demands that the Legislature ascertain whether such districts are compelled and draw the ones compelled. But the only way to know whether there are districts compelled by the effects test of the VRA is to conduct analysis of large populations of minority voters and whether there is racially polarized voting. The Legislature’s failure to even conduct any such analysis makes a mockery of the Supreme Court’s authority and precedent.

56. The final criteria adopted by the Redistricting Committees prohibited the use of any racial data in the 2021 redistricting process.¹⁴

2. The Legislative Defendants Mandate the Use of County Clusters That Contravene the North Carolina Constitution.

57. On August 12, 2021, the United States Census Data released block-level data showing North Carolina’s population increased from 9,535,483 residents in 2010¹⁵ to 10,439,388 residents in 2020.¹⁶ This 9.5 percent increase gave North Carolina an additional Congressional seat, raising its delegation from 13 members of the House of Representatives to 14 members, and thereby requiring the addition of one Congressional district.¹⁷

58. The North Carolina population increase reflected in the Census data was not evenly distributed throughout the state, with the vast majority of population increase occurring in urban

¹⁴ *Criteria Adopted by the Committees*, North Carolina Joint Redistricting Committee, Aug. 12, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-12-2021/Criteria.adopted.8.12.pdf>.

¹⁵ U.S. Census Bureau, *North Carolina: 2010: Population and Housing Unit Census* (2012), <https://www.census.gov/prod/cen2010/cph-2-35.pdf>.

¹⁶ *North Carolina: 2020 Census*, U.S. CENSUS BUREAU (Aug. 25, 2021), <https://www.census.gov/library/stories/state-by-state/north-carolina-population-change-between-census-decade.html>.

¹⁷ *2020 Census: Apportionment of the U.S. House of Representatives*, U.S. CENSUS BUREAU (Apr. 26, 2021), <https://www.census.gov/library/visualizations/2021/dec/2020-apportionment-map.html>.

and suburban areas.¹⁸ Without updating the district lines during the decennial redistricting process, North Carolina’s existing districts for the North Carolina House of Representatives and North Carolina Senate would be substantially unequal in population size and deviation.¹⁹

59. On Tuesday, October 5, 2021, the House Committee on Redistricting and the Senate Committee on Redistricting and Elections convened separately. In both meetings, the Redistricting Chairs announced in both chambers that they would be limiting the consideration of Senate and House maps to those drawn using county clusters described in the academic paper *N.C. General Assembly County Clusterings from the 2020 Census* (the “Duke Academic Paper”), published on the Duke University website “Quantifying Gerrymandering.”²⁰

60. The Duke Academic Paper states: “The one part of *Stephenson v. Bartlett* which this analysis does not reflect is compliance with the Voting Rights Act.”²¹

61. In the meeting of the Senate Committee on Redistricting and Elections, Defendant Hise provided the set of sixteen possible Senate cluster options, based upon the Duke Academic Paper, that would be required for any map to be considered for enactment (the “Duke Senate Clusters”). See “Duke Senate Groupings Maps 11x17.”²²

¹⁸ Tyler Dukes, *How Has Your NC Neighborhood Grown Since 2010? Use This Map of Census Data to Find Out*, NEWS & OBSERVER (Aug. 14, 2021), <https://www.newsobserver.com/news/local/article253375248.html>.

¹⁹ Rebecca Tippet, *Preview: What Redistricting Means for NC’s House*, CAROLINA DEMOGRAPHY (Aug. 2, 2021), <https://www.ncdemography.org/2021/08/02/preview-what-redistricting-means-for-ncs-house/>; Rebecca Tippet, *Preview: What Redistricting Means for NC’s Senate*, CAROLINA DEMOGRAPHY (Aug. 3, 2021), <https://www.ncdemography.org/2021/08/03/preview-what-redistricting-means-for-ncs-senate/>.

²⁰ Christopher Cooper et al., *NC General Assembly County Clusterings from the 2020 Census*, QUANTIFYING GERRYMANDERING (Aug. 17, 2021), <https://sites.duke.edu/quantifyinggerrymandering/files/2021/08/countyClusters2020.pdf>.

²¹ *Id.* at 1.

²² *Duke Senate Groupings Maps 11x17*, North Carolina Senate Redistricting and Elections Committee, Oct. 5, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/10-05-2021/Duke%20Senate%20Groupings%20Maps%2011x17.pdf>.

62. Senator Blue repeatedly asked how leadership had ensured compliance with the VRA, as required under the North Carolina Constitution, in the mandated clusters without any demographic analysis. Senator Marcus stated the committee needed to conduct an RPV study to ensure legal compliance. Defendant Hise confirmed the Chairs’ views that no demographic data was legally required, and that there was no directive to staff to order any RPV analysis or provide racial data to members drawing maps.²³

63. In the meeting of the House Committee on Redistricting, Defendant Hall provided the set of eight possible House cluster options, based upon the Duke Academic Paper, that constituted the set of options eligible for adoption (the “Duke House Clusters”). *See* “Duke House Groupings Maps 11x17.pdf.”²⁴ Defendant Hall stated that no maps that used cluster options other than the Duke House Clusters would be considered.

64. Representative Harrison questioned how the committee would comply with the VRA as the Duke Academic Paper stated its analysis did not reflect compliance with the VRA as required by *Stephenson*. Representative Reives inquired about the obligations under the VRA and how to comply with them. Defendant Hall stated the committees made a decision not to use racial data, contrary to redistricting criteria used in the previous two sessions, which Defendant Hall alleged to be “the best way” to ensure compliance with the VRA as well as other state and federal law.²⁵

²³ NCGA Redistricting, 2021-10-05 Committee (Senate), YOUTUBE, <https://youtu.be/IphUZPhkqSY?t=2175>, (Oct. 5, 2021).

²⁴ *Duke House Groupings Maps 11x17*, North Carolina House Redistricting Committee, Oct. 5, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/House2021-182/2021/October%205,%202021/Duke%20House%20Groupings%20Maps%2011x17.pdf>.

²⁵ NCGA Redistricting, 2021-10-05 Committee (House), YOUTUBE, https://youtu.be/9UsiS_6rlUA?t=7961 (Oct. 6, 2021).

3. The Legislature Is Notified that the Mandated County Clusters Violate North Carolina Law.

65. Three days after the proposed County Cluster Maps were publicly released, on Friday, October 8, 2021, counsel for Plaintiff sent a letter to Legislative Defendants informing them that the purportedly “race-blind” redistricting criteria adopted and the mandated county clusters violated well-established redistricting law (the “October 8 Letter”).²⁶ The October 8 Letter also informed Legislative Defendants of specific areas in the North Carolina Senate and House cluster maps that required examination for VRA Compliance, including:

- a. the Greene/Wayne/Wilson cluster “Q1” mandated by all 16 of the Senate Duke Cluster options;
- b. the Sampson/Wayne cluster “LL2” mandated in some of the House Duke Cluster options;
- c. the Camden/Gates/Hertford/Pasquotank cluster “NN1” mandated in some of the House Duke Cluster options.

66. Legislative Defendants failed to take any action in response to this letter and the highlighted harm to Black voters. This inaction is strong evidence of the Legislature’s racially discriminatory intent and its violation of the process requirements imposed by the *Stephenson* cases.

67. After draft Senate map, “SST-4”, was made publicly available on the North Carolina Legislature’s website (ncleg.gov),²⁷ counsel for Plaintiff sent a second letter to

²⁶ Letter from SCSJ Attorneys to Legislative Defendants, Oct. 8, 2021, https://southerncoalition.org/wp-content/uploads/2021/10/SCSJ-correspondence_NCGA-redistricting_2021.10.082.pdf.

²⁷ See *SST-4*, North Carolina Senate Redistricting Committee, Member Submitted Maps https://www.ncleg.gov/documentsites/committees/Senate2021-154/2021/Member%20Submitted%20Maps/SST-4/SST-4_19x36.pdf (last visited Dec. 12, 2021).

Legislative Defendants on Monday, October 25, 2021,²⁸ expressing concern that the cluster “Z1” chosen for this map from Duke Senate Clusters map “Duke_Senate 02” would obstruct the ability of Black voters to continue electing their candidate of choice. On Tuesday, October 26, 2021, Plaintiff Common Cause sent a letter to Legislative Defendants providing RPV analysis for Senate Districts 1 and 9 in map SST-4 that showed legally significant racially polarized voting in these proposed districts.

68. The Legislature hastily enacted the 2021 Enacted Maps shortly thereafter and with almost unprecedented speed, despite failing to announce any public deadline for the proposal or consideration of maps or timeline for enactment. Specifically:

- a. A proposed version of the state Senate map (“SST-13”) was filed on Friday, October 29, 2021 as Senate Bill 739 (“SB739”) and received its first reading in the Senate that day. It was then referred to the Senate Redistricting Committee on November 1 where the Redistricting Committee adopted a substitute along party lines (“SBK-7”). It then passed its second and third readings in the Senate by November 3 along party lines, and passed all three readings and the House Redistricting Committee without any alteration on November 3 – 4, 2021. SB739 was ratified into law on November 4 as S.L. 2021-173.
- b. A placeholder, blank version of the state House Map was filed on Thursday, October 28, 2021 as House Bill 976 (“HB976”) where it passed its first reading. A committee substitute (“HBK-14”) received a favorable review

²⁸ Letter from SCSJ Attorneys to Legislative Defendants, Oct. 25, 2021, <https://southerncoalition.org/wp-content/uploads/2021/10/SCSJ-Letter-Senate-Map-10-25-21-FINAL.pdf>.

and, after one amendment, passed its second and third readings on the House and its first reading in the Senate on November 2, 2021. It received a favorable report from the Senate Redistricting Committee on November 3, 2021 without alteration and passed its second and third readings on November 4, 2021. HB976 was ratified into law on November 4, 2021 as S.L. 2021-175.

- c. A proposed Congressional map (“CST-13”) was filed on October 29, 2021 as Senate Bill 740 (“SB740”) and passed its first reading and received a favorable report from the Senate Redistricting Committee on November 1, 2021. It proceeded unaltered through its second and third readings in the Senate and its first reading in the House on November 2, received a favorable report from the House Redistricting Committee on November 3, and proceeded unaltered through its second and third readings in the House on November 4, 2021. SB740 was ratified into law on November 4, 2021 as S.L. 2021-174.

69. In the rush to finalize maps, Legislative Defendants rejected or tabled multiple amendments offered by other Senate and House legislators intended to require assessment and, as appropriate, to ameliorate the harm that would result to voters of color from the Legislative Defendants’ redistricting process. Legislative Defendants also continued to defend the adopted criteria with inaccurate recitations of applicable law and mischaracterizations of fact. For example, in the meeting of the Senate Committee on Redistricting and Elections on November 2, Defendant Newton stated that “some have asked whether the *Stephenson* cases require that race be used in redistricting,” and then sought to justify the Legislative Defendants’ choice to prohibit use of racial

data by asserting that (1) subsequent case law held that use of racial data or analysis was not legally required, (2) *Stephenson* did not apply because Section 5 of the VRA is not currently enforceable, and (3) it was the duty of other members to propose plans with majority-minority districts (despite unequivocal direction from the Redistricting Chairs that *no plan would be considered if racial data had been used*).

70. Legislative Defendants’ flagrant disregard for the redistricting requirements set forth in *Stephenson* certainly confirms that their destruction of crossover districts that were providing Black voters with an opportunity to elect their candidate of choice was a willful and intentional act of racial discrimination in violation of the North Carolina Constitution. These bad acts are not merely abstract but will in fact cause harm to Black voters by reducing the number of districts in which they are effectively able to elect their candidate of choice, in violation of their rights to equal protection, and will frustrate the core missions of Plaintiff Common Cause to make government at all levels more representative, open, and responsive to the interests of ordinary people, including voters of color. Plaintiff forecast to Legislative Defendants that their members and other voters of color would specifically be harmed in *at least* the following areas, and this harm is still ensured given the districts drawn in the final maps proposed by Legislative Defendants and enacted in SB739 and HB976:²⁹

- a. Choice of Senate cluster “Z1”. The Duke Senate Clusters provided two potential cluster options for the “Z1” cluster in northeast North Carolina. The proposed Senate map “SST-4” (an early draft of the enacted SB739)

²⁹ Plaintiff does not concede that there may not be other clusters that raise VRA implications, but those are not the subject of this litigation, which only focuses on the racially discriminatory exclusion of racial data in the select of clusters that the Legislature defined as “legal” and the Legislature’s failure to do consider any racial data that is required by the NC Supreme Court in the *Stephenson* cases.

was drafted using the Duke Senate Cluster “Duke_Senate 02,” which eliminates an effective crossover district, thus obliterating the voting power of Black voters in this area of North Carolina, specifically in Senate District 1. The Legislature had the option to adopt a cluster comprised of Warren, Halifax, Martin, Bertie, Northampton, Hertford, Gates, Camden, Currituck, and Tyrell counties, with a BVAP of 42.33%, and were advised of this by Plaintiff’s counsel on October 25, 2021. While there is racially polarized voting in these counties, collectively and using reconstituted election results, this one-district cluster would have elected the Black-preferred candidate in recent statewide racially contested elections. However, the “Z1” cluster ultimately selected for inclusion in SB739 is comprised of Northampton, Hertford, Bertie, Gates, Perquimans, Pasquotank, Camden, Currituck, Tyrell, and Dare Counties, and dilutes the ability of Black voters to elect their candidates of choice. The BVAP in District 1 of SB739 using this cluster is only 29.49%. There is racially polarized voting in these counties which, collectively and using reconstituted election results, would not have elected the Black-preferred candidate in recent statewide, racially contested elections. Even without explicitly viewing racial data during drafting, any individual with passing familiarity with this area of North Carolina would understand that the choice of this “Z1” cluster in SB739 would destroy Black voters’ ability to continue electing their candidate of choice in a crossover district.

- b. House Cluster “KK2”. The Duke House Clusters provided two configurations for the group of six counties in southeast North Carolina (Wayne, Sampson, Duplin, Onslow, Pender, and Bladen). The 2019 House Remedial Map formed House District 21 from portions of Wayne and Sampson counties, which provided Black voters the opportunity to elect their candidate of choice at 39% BVAP. On October 8, 2021, Plaintiff’s counsel notified Legislative Defendants that House District 21 was providing Black voters the opportunity to elect their candidate of choice, and that it would be possible to create two House districts from the Wayne and Sampson County Cluster. Plaintiff’s counsel also notified Legislative Defendants that voting in Sampson and Wayne Counties was highly racially polarized and thus there was substantial evidence of legally significant racially polarized voting in this cluster. However, the enacted HB976 intentionally dismantled an effective cross-over district that allowed Black voters to elect their candidate of choice.

71. As illustrated above, each of these examples of Senate and House clusters required by the Committee Chairs, and enacted in SB739 and HB976, would deprive Black voters the opportunity to elect candidates of their choice. Under the purportedly “race-blind” criteria adopted by the Legislative Defendants, however, the deleterious consequences on BVAP has not, and in fact cannot, be directly and appropriately considered by the Redistricting Committees.

72. The racially discriminatory impact of this purportedly “race-blind” approach, in violation of Article I, Section 19 of the North Carolina Constitution, has a well-understood detrimental effect on Black representation. Overall, Legislative Defendants’ intentional racially

discriminatory actions will cause a drastic decrease in representation for Black voters in the North Carolina House and Senate, as well as Congress. Of the 12 Senate districts that currently provide a genuine and equitable opportunity for voters of color to elect their candidate of choice (who also identify as Black),³⁰ four – the districts electing Senator Ernestine Bazemore, Senator Toby Fitch, Senator Ben Clark, and Senator Sydney Batch – are unlikely or certain not to elect candidates of choice for voters of color under SB739.³¹ Of the 23 House districts that currently perform and provide a genuine and equitable opportunity for voters of color to elect their candidate of choice (who also identify as Black),³² five – the districts electing Representative Raymond Smith, Representative James Gailliard, Representative Linda Cooper-Suggs, Representative Howard Hunter II, and Represented Garland Pierce – are unlikely or certain not to elect candidates of choice for voters of color under HB976.³³ Of the two Congressional districts that currently perform and provide a genuine and equitable opportunity for voters of color to elect their candidate of

³⁰ Sen. Sydney Batch, current SD 17; Sen. Ernestine Bazemore, current SD 3; Sen. Dan Blue, current SD 14; Sen. Ben Clark, current SD 21; Sen. Don Davis, current SD 5; Sen. Milton F. “Toby” Fitch, current SD 4; Sen. Valerie Foushee, current SD 23; Sen. Natalie Murdock, current SD 20; Sen. Gladys Robinson, current SD 28; DeAndra Salavador, current SD 39; Sen. Joyce Waddell, current SD 40; and Sen. Paul Lowe, current SD 32. Available at: <https://www.ncleg.gov/Members/MemberList/S>.

³¹ Laura Leslie, *Minority Lawmakers Likely to Lose Out Under Partisan NC District Maps*, WRAL (November 8, 2021), <https://www.wral.com/minority-lawmakers-likely-to-lose-out-under-partisan-nc-district-maps/19969697/>.

³² Rep. Howard Hunter, current HD 5, Rep. Kandie Smith, current HD 8, Rep. Raymond Smith, current HD 21, Rep. Shelly Willingham, current HD 23, Rep. Linda Cooper-Suggs, current HD 24, Rep. James D. Gaillard, current HD 25, Rep. Vernetta Alston, current HD 29, Rep. Zack Hawkin, current HD 31, Rep. Terry Garrison, current HD 32, Rep. Rosa U. Gill, current HD 33, Rep. Abe Jones, current HD 38, Rep. Marvin W. Lucas, current HD 42, Rep. Garland Pierce, current HD 48, Rep. Robert T. Reives, current HD 54, Rep. Amos L. Quick, III, current HD 58, Rep. Cecil Brockman, current HD 60, Rep. Amber Baker, current HD 72, Rep. Terry M. Brown,, current HD 92, Rep. Nasif Majeed, current HD 99, Rep. Carolyn Logan, current HD 101, Rep. Brandon Lofton, current HD 104, Rep. Carla Cunningham, current HD 106, Rep. Kelly Alexander, current HD 107, Available at <https://www.ncleg.gov/Members/MemberList/H>.

³³ Laura Leslie, *Minority Lawmakers Likely to Lose Out Under Partisan NC District Maps*, WRAL (November 8, 2021), <https://www.wral.com/minority-lawmakers-likely-to-lose-out-under-partisan-nc-district-maps/19969697/>

choice (who also identify as Black),³⁴ one – the district electing Congressman G.K. Butterfield – is unlikely to elect candidates of choice for voters of color under SB740. This result could have been avoided had the General Assembly not flagrantly violated the redistricting process mandates issued by the North Carolina Supreme Court. Instead, functioning crossover districts were intentionally destroyed in violation of Article I, Section 19 of the North Carolina Constitution.

73. Significantly, while Legislative Defendants have tried to justify their actions by a purported and erroneous view that it will lower the risk of violations of federal law, they have not expressed the belief that undertaking the first step of *Stephenson* would automatically violate federal law. To the contrary, they have affirmed their belief that it is possible to comply with the requirements of both state and federal law, as set forth in *Stephenson*. For example, in a meeting of the Senate Redistricting Committee on Tuesday, October 5, 2021, Defendant Hise stated that “It is our position that you can comply with both laws at the same time” when asked about compliance with the VRA and the county clusters required by the Whole County Provision under *Stephenson*.

74. Relatedly, Legislative Defendants have also expressed the view that using race to draw maps is not a *per se* violation of federal law, but rather only impermissible if they did not first ensure the *Gingles* preconditions were satisfied before using race (as they failed to do last cycle and as determined by the court in *Covington v. North Carolina*, 316 F.R.D. 117, 176-78 (M.D.N.C. 2016), *summarily aff’d*, 137 S. Ct. 2211 (2017)). For example, in a meeting of the Senate Committee on Tuesday, November 2, 2021, Defendant Newton stated “if we draw districts using race, and we do not satisfy the *Gingles* preconditions, we risk violating the Equal Protections

³⁴ Rep. G.K. Butterfield, current CD 1, Rep. Alma Adams, current CD 12. Available at <https://www.congress.gov/members?q=%7B%22member-state%22%3A%22North+Carolina%22%2C%22congress%22%3A117%7D>.

Clause of the Fourteenth Amendment of the United States Constitution.” This statement acknowledges that, if the *Gingles* preconditions were satisfied, the use of race to draw districts would *not* violate the Equal Protections Clause and thus use of race in redistricting is not prohibited by federal law.

75. These views were reinforced by statements from counsel for Legislative Defendants during oral argument in the matter *North Carolina NAACP v. Berger*, in which counsel for Legislative Defendants asserted that Legislative Defendant were not required under law to ascertain what VRA districts are required nor to do any analysis of racial demographic data. *See* Transcript of 30 November 2021 Oral Argument, *NC NAACP v. Berger*, No. 21CVS014476 (Wake Cty. Super. Ct. Nov. 30, 2021) at p. 51 lines 15-17 (“There’s no affirmative duty on the Legislature to engage in any particular process to get a complaint VRA map.”), p. 49, lines 18-19 (“There’s no requirement that we [the Legislature] inform ourselves of that data to comply with the VRA.”), p. 50, lines 11-13 (“There’s been no formal [analysis to determine whether the maps are VRA compliant] . . . the Legislature hasn’t had a hearing or done anything like that. They’re not required to.”).

76. Accordingly, Legislative Defendants’ role in orchestrating a redistricting process that defiantly ignored the unequivocal directions of the highest court in this state is not based upon the belief that doing so would be inconsistent with federal law, including the Equal Protection Clause of the Fourteenth Amendment. Rather, it is based upon an erroneous legal view that the first step of *Stephenson* is not required at all.

C. The Legislative Defendants Have Continued to Partisan Gerrymander State Legislative and Congressional Maps to Further Entrench Their Party in Power.

1. The North Carolina Republican Party Has a Long History of Passing Redistricting and Election-Related Laws to Ensure Political Entrenchment and Frustration of the Ability of North Carolina Voters to Elect Their Candidates of Choice.

77. While the mechanics, justifications, and legal arguments have all shifted as strategies and tactics have changed, one dynamic has remained constant: the North Carolina Republican Party’s relentless efforts to insulate their political power from the will of the people of North Carolina.

78. In 2010, the North Carolina Republican Party took unified control of the North Carolina General Assembly for the first time since 1870. No sooner were their newfound majorities sworn in than they started working to entrench those majorities, using discriminatory redistricting processes and changes in election laws to place their political power beyond the reach of North Carolina voters. Many of these efforts have been challenged in both state and federal court, and many of these efforts have been struck down by those same courts. While the specific claims at issue have shifted over time, the overall thrust of these cases is clear: the North Carolina Republican Party attempting to entrench its power, by any means necessary, in violation of applicable law. Plaintiff Common Cause’s claims in this case are only the latest episode in this saga.

79. The majorities that precipitated the North Carolina Republican Party’s unlawful political entrenchment were rooted in partisan machinations from the beginning. In 2010, the North Carolina Republican Party, in coordination with the Republican National Committee, targeted the North Carolina General Assembly via their “REDistricting Majority Project,” or “REDMAP.” REDMAP sought to identify opportunities to take control of state legislatures throughout the

country ahead of the 2011 decennial redistricting process, in order to use that newfound control to gerrymander maps in favor of Republican candidates.

80. REDMAP was wildly successful, with Republicans winning 18 of the 22 North Carolina House and Senate races targeted in 2010, and giving Republicans control of the both chambers of the General Assembly for the first time since 1870.

81. Republican leadership in the General Assembly immediately put these REDMAP-powered majorities to work in the 2011 redistricting process. Working out of the basement of the North Carolina Republican Party headquarters, a team led by Tom Hofeller drew legislative maps in secret. The goal was clear: to ensure durable Republican majorities in each legislative delegation, regardless of the desires of North Carolina voters.

82. The REDMAP-derived Republican majorities passed the Hofeller-drawn plans without a single Democrat in support, with the express goal of entrenching Republican legislative dominance. The 2011 plans did exactly that. In elections in 2012, 2014, and 2016, the percentage of seats won by Republicans in the House, Senate, and Congressional delegations greatly exceeded the Republican vote share statewide. The 2011 state Legislative plans were struck down as unconstitutional racial gerrymanders in *Covington v. North Carolina*, 316 F.R.D. at 176-78. The *Covington* court found that the Legislature's proffered explanation for the maps as necessary for Voting Rights Act compliance was unjustified. *Id.* at 168-69. The U.S. Supreme Court summarily affirmed this decision. 137 S. Ct. 2211 (2017). A similar finding was made concerning two Congressional districts in *Harris v. McCrory*, 159 F. Supp. 3d 600, 604 (M.D.N.C. 2016), and was also affirmed by the U.S. Supreme Court. *Cooper v. Harris*, 137 S. Ct. 1455, 1481-82 (2017).

83. In the immediate aftermath of the *Covington* decision, before remedial maps undoing the unconstitutional gerrymanders could be passed, the Republican-dominated General

Assembly reached for alternate means to entrench their political power. The day after the Supreme Court affirmed the *Covington* decision, the General Assembly placed a constitutional amendment on the ballot to authorize a voter ID law in North Carolina. The amendment was rife with procedural irregularities, including complete silence as to implementation of the amendment. After the amendment referendum narrowly passed, the outgoing legislature (and its soon-to-disappear Republican supermajority) passed racially discriminatory legislation implementing the amendment. This legislation was vetoed by the Governor, but the Governor's veto was subsequently overridden in a last act of the Republican supermajority in a lame duck session just before a legislature elected under remedial maps would enter office. The amendment was later struck down as intentionally discriminatory on the basis of race. Final Judgment and Order, *Holmes v. Moore*, No. 18-CVS-15292 (N.C. Sup. Ct. Sept. 17, 2021).

2. After the 2011 Plans Were Struck Down, the Legislature Drew Remedial Maps in 2017 and Again Attempted to Entrench Their Political Power.

84. The Legislature sought to defend the subsequently enacted 2017 Plans exclusively as partisan gerrymanders. Republican leaders made repeated public statements about their partisan intentions, and grounded their legal defense of the maps in the theory that partisan gerrymandering was explicitly allowable under both the U.S. and North Carolina Constitutions. After a two-week trial, a three-judge panel struck down the 2017 state Legislative maps as unconstitutional partisan gerrymanders. *Common Cause v. Lewis*, 2019 N.C. Super. LEXIS 56, at *404-05. Shortly thereafter, the 2017 Congressional maps were also enjoined as unconstitutional partisan gerrymanders. *Harper v. Lewis*, 2019 N.C. Super. LEXIS 122, at *24-25 (N.C. Sup. Ct. Oct. 28, 2019).

3. The Legislative Defendants Have Continued This Cycle of Gerrymandering By Enacting Partisan Gerrymandered State Legislative and Congressional Maps.

85. The 2021 Enacted Maps all passed along party lines. The State House map, HB976, passed the House on a strict party line vote, with 67 Republican Representatives in favor and 49 Democratic Representatives opposed. HB976 also passed the Senate on a strict party line vote, with 25 Republican Senators in favor and 21 Democratic Senators opposed.

86. The State Senate map, SB739, passed the Senate on a strict party line vote, with 26 Republican Senators in favor and 19 Democratic Senators opposed. SB739 also passed the House on a strict party line vote, with 65 Republican Representatives in favor and 49 Democratic Representatives opposed.

87. The Congressional map, SB740, passed the Senate on a strict party line vote, with 27 Republican Senators in favor and 22 Democratic Senators opposed. SB740 also passed the House on a strict party line vote, with 65 Republican Representatives in favor and 49 Democratic Representatives opposed.

88. Each of the maps were enacted with the intent to dilute the vote of and impede voters who support candidates not in the majority party in the General Assembly from electing their candidate of choice.

89. Each of the enacted maps will have an extreme and durable discriminatory effect on voters who prefer Democratic candidates.

90. The extreme partisan outcomes produced by each of the challenged maps cannot be explained by any neutral reason.

D. The Three Challenged Maps Were Enacted with the Intent to Discriminate Against Voters Who Support Democratic Candidates.

91. Legislative Defendants’ claims that they did not use political data are belied by the fact that simulations demonstrate that plans produced without partisan data almost never produce the outcomes seen in the enacted plans.

92. Moreover, Legislative Defendants acknowledged they would not be enforcing the “rule” that partisan and racial data not be used. Upon information and belief, numerous Republican legislators brought with them into the map-drawing room papers upon which they relied in drawing district lines on the public terminals, and the poor audio quality of the livestream made it impossible for the public to hear many of the conversations held between Republican legislators and their staffers.

93. Given the Legislative Defendants’ defiant rejection of the rules the North Carolina Supreme Court has imposed on redistricting; the inconsistency between their claims of a transparent process with the opacity of the process that actually occurred; and their failure to meaningfully exclude members from using political data, an inference of improper intent is supported by the circumstantial evidence.

Congressional Districts at Issue

94. The Congressional map (SB740) demonstrates cracking and packing of Democratic-performing areas that would not be possible without utilizing political data (or a deep familiarity with the politics of certain areas, which belies the claims of not using any partisan data).

95. While the entire design of the Congressional map is necessary to effectuating the unconstitutional and discriminatory effect orchestrated by Legislative Defendants, the following districts exemplify the packing and cracking strategies used – strategies that highlight the intentional manipulation of district lines in order to achieve unconstitutional goals.

96. In Congressional District 2, the Legislature purposefully excluded Greenville in Pitt County – despite splitting Pitt County to include a microscopic portion of the county in District 2 – in order to undermine Democratic and Black voting strength in this Congressional District. Substantial portions of Greenville, a heavily Black and Democratic city widely known as such to anyone with a passing familiarity of the state’s political geography, have historically been included in that Congressional district, long represented by the candidate of choice of Black voters even though it has, for years, never needed to achieve majority-Black status in order to provide Black voters the opportunity to elect their candidates of choice.

97. Instead of including Greenville, as has historically been done, the Legislature instead chose to add Caswell and Person Counties to Congressional District 2, counties that are overwhelmingly White and overwhelmingly Republican. Again, to believe that map drawers would not be aware of the racial and political implications of this significant change would require abandonment of all common sense and logic, and an assumption that North Carolina legislators do not understand the state’s political geography at all.

98. These changes to Congressional District 2 dramatically reduce the BVAP in the district, from 42.38% to 39.99%, likely destroying a functioning crossover district and dramatically decreasing the Black political performance of the district, leading the Cook Political Report to list this district as a “Toss Up.”³⁵

99. Likewise, in Congressional District 4, the Sandhills counties of Cumberland and Sampson Counties are joined with non-Sandhill counties of Harnett and Johnston Counties, which are Triangle suburb counties, and a heavily Republican portion of Wayne County. This decision

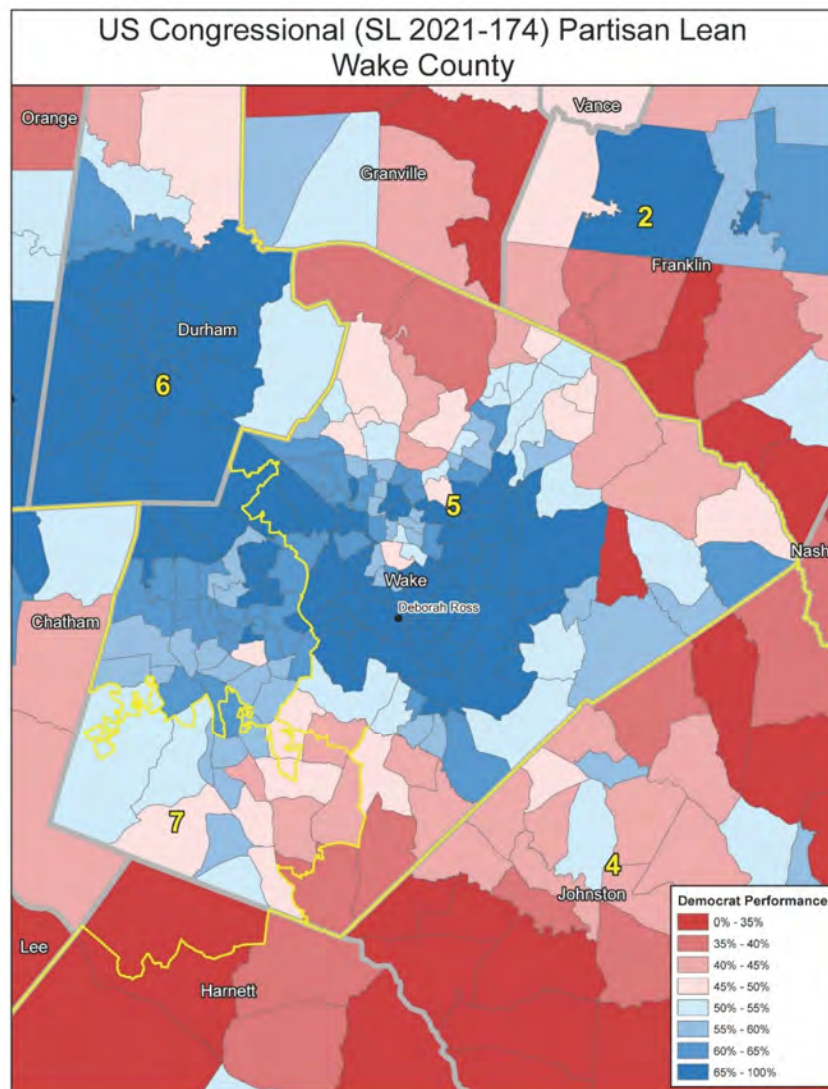
³⁵ Cook Political Report, *2022 House Race Ratings* (Dec. 9, 2021), <https://www.cookpolitical.com/ratings/house-race-ratings> (last visited Dec. 10, 2021).

effectively frustrates the ability of Democratic and Black voters in Fayetteville (Cumberland County), widely known to be such, by submerging those voters within a district of heavily White and conservative areas. In court-ordered remedial districts in 2016 and 2019, Cumberland County was never joined with Harnett or Johnston Counties.

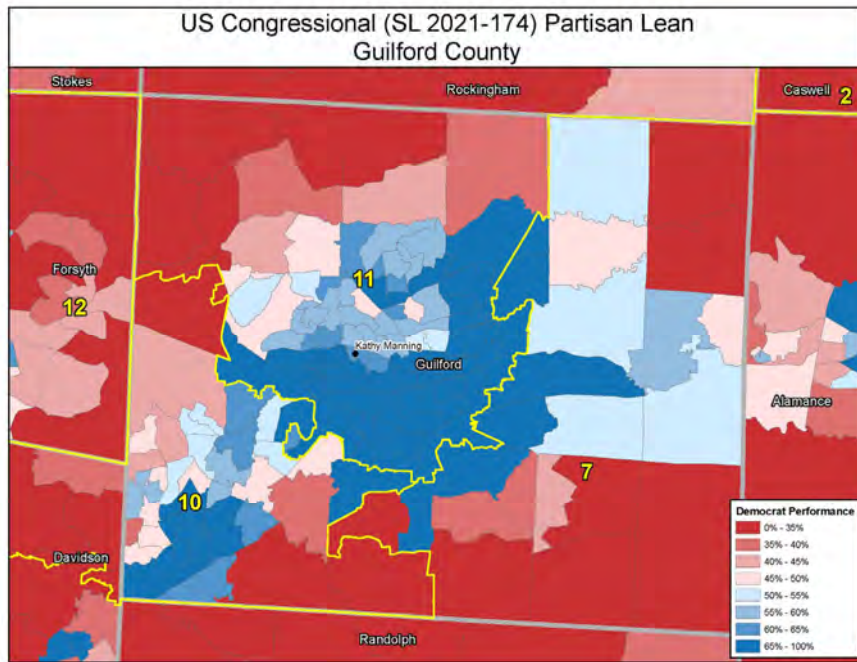
100. The Triangle region was subject to extreme packing and cracking in order to effectuate partisan gerrymandering in that region. Wake County, which is overwhelmingly Democratic, is split into 3 different districts in order to prevent the natural emergence of a third Democratic leaning district in the county.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

101. The image below demonstrates that Democratic voters are packed into Congressional District 5. The remainder of Democratic voters in the county are cracked, with half being assigned to the already heavily Democratic district (Congressional District 6) based in Orange and Durham County and the rest being stranded in a Republican-leaning, Triad-based district (Congressional District 7). Such surgical packing and cracking would not be possible without partisan data and an intense familiarity with the political characteristics of the precincts in Wake County – familiarity that Legislative Defendants had.

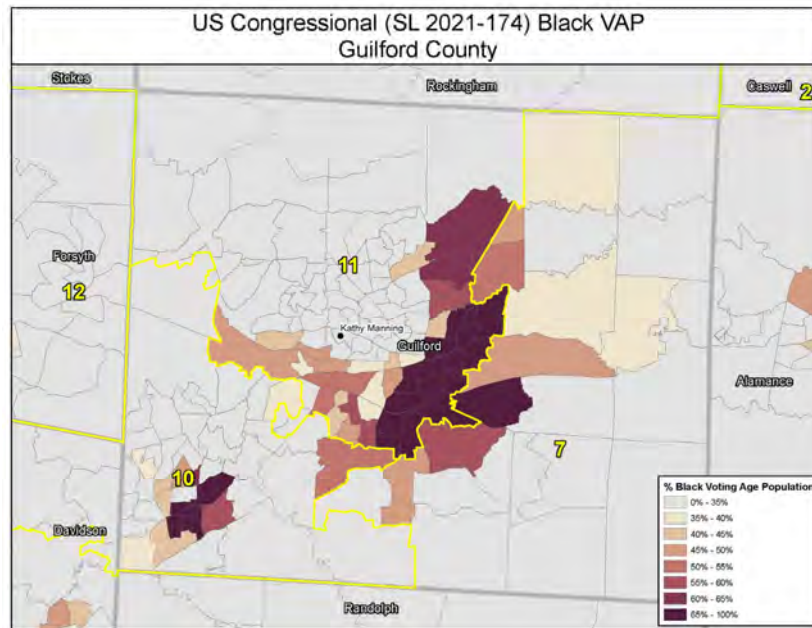


102. The Triad region saw some of the most egregious cracking strategies and gross disregard for communities of interest. As the image below demonstrates, the heavily Black and heavily Democratic Guilford County was cracked into 3 districts – Congressional District 11, Congressional District 7 and Congressional District 10.



[REST OF PAGE INTENTIONALLY LEFT BLANK]

103. The cracking of Black voters in Guilford County was also done with near surgical precision and presents strong evidence of the Legislative Defendants’ intentional racial discrimination in violation Article I, Section 19.³⁶

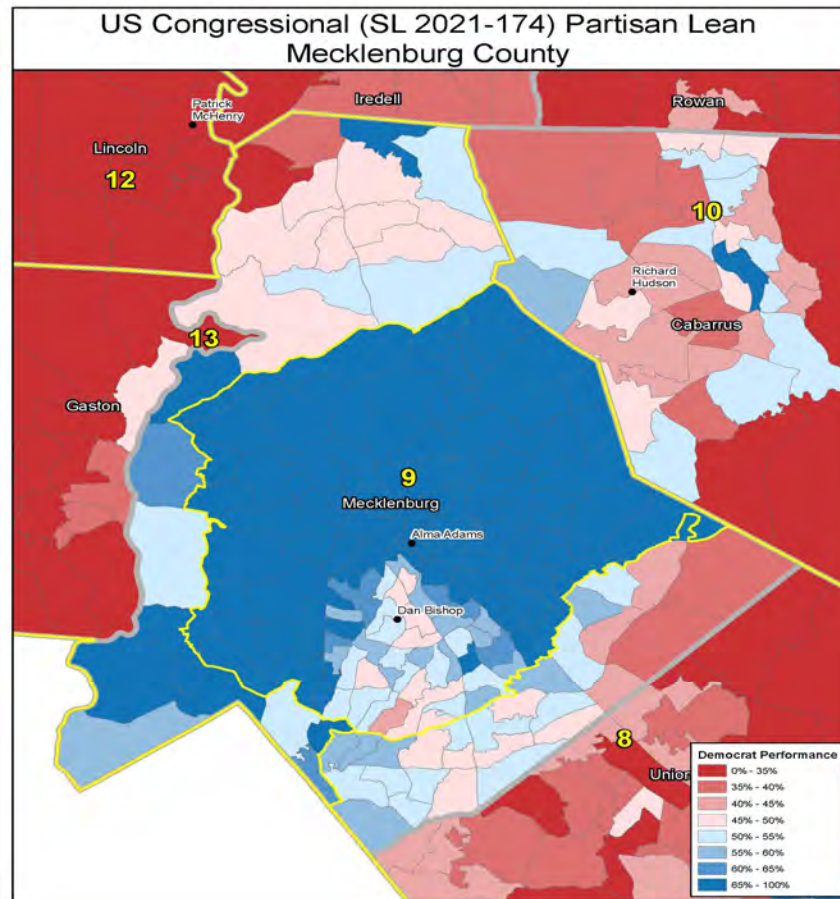


104. Black and Democratic voters are stranded in Republican districts reaching, to the west, out to Watauga County and, to the east, into Wake County – regions that have nothing in common with Guilford County. This cracking also belies the expected defense that maps that favor Republicans are caused by the fact that Democrats choose to congregate in urban areas. If those areas are egregiously cracked, as seen above, that plainly cannot be a plausible, non-discriminatory reason for the extreme partisan outcomes produced by the enacted Congressional maps.

105. In Mecklenburg County, a pattern of cracking and packing emerges as Democratic voters were packed into Congressional District 9 and cracked between the remaining two Republican leaning Congressional Districts 8 and 13. Such surgical packing and cracking would

³⁶ Plaintiff does not allege that the VRA compelled the drawing of any district in Guilford County, but that does not give the Legislature free reign to crack Black voting populations in order to frustrate their political voice.

not be possible without partisan data and an intense familiarity with the political characteristics of the precincts in Mecklenburg County – familiarity that Legislative Defendants had.



106. Plaintiff Common Cause has members who are voters who identify as Black in each of the above districts.

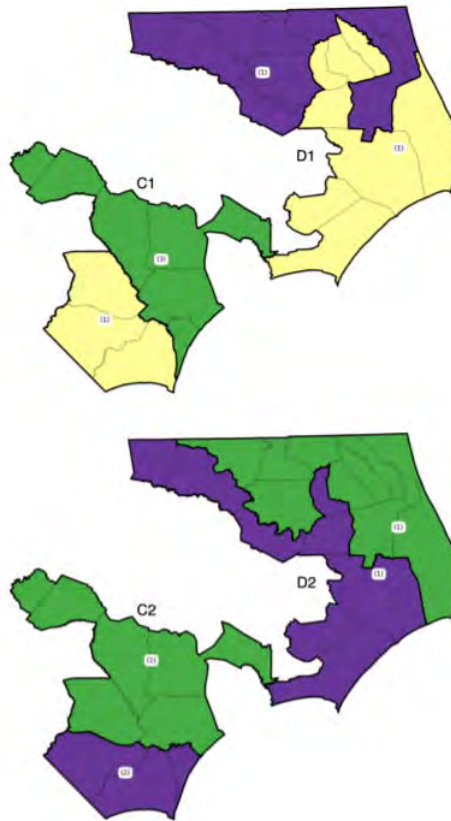
107. Plaintiff Common Cause has members who are voters who prefer Democratic Congressional candidates in each of the above districts.

Senate Districts at Issue

108. The Senate Map demonstrates cracking and packing of Democratic-performing areas that would not be possible without political data (or a deep familiarity with the politics of certain areas, which belies the claims of not using any partisan data).

109. While the entire design of the Senate map is necessary to effectuating the unconstitutional and discriminatory effect orchestrated by Legislative Defendants, the following districts exemplify the packing and strategies used – strategies that highlight the intentional manipulation of district lines in order to achieve the unconstitutional goals. They likewise demonstrate the racially discriminatory efforts at play.

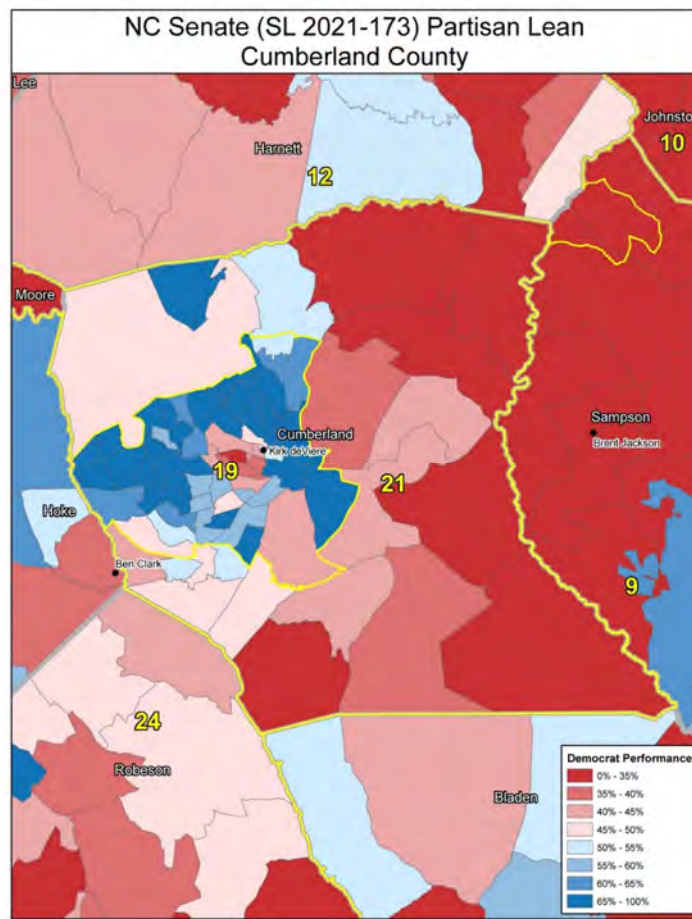
110. The Legislature was presented with two possible clusters for a district in Northeast North Carolina (for a seat currently held by Sen. Ernestine Bazemore). The two cluster options are represented below:



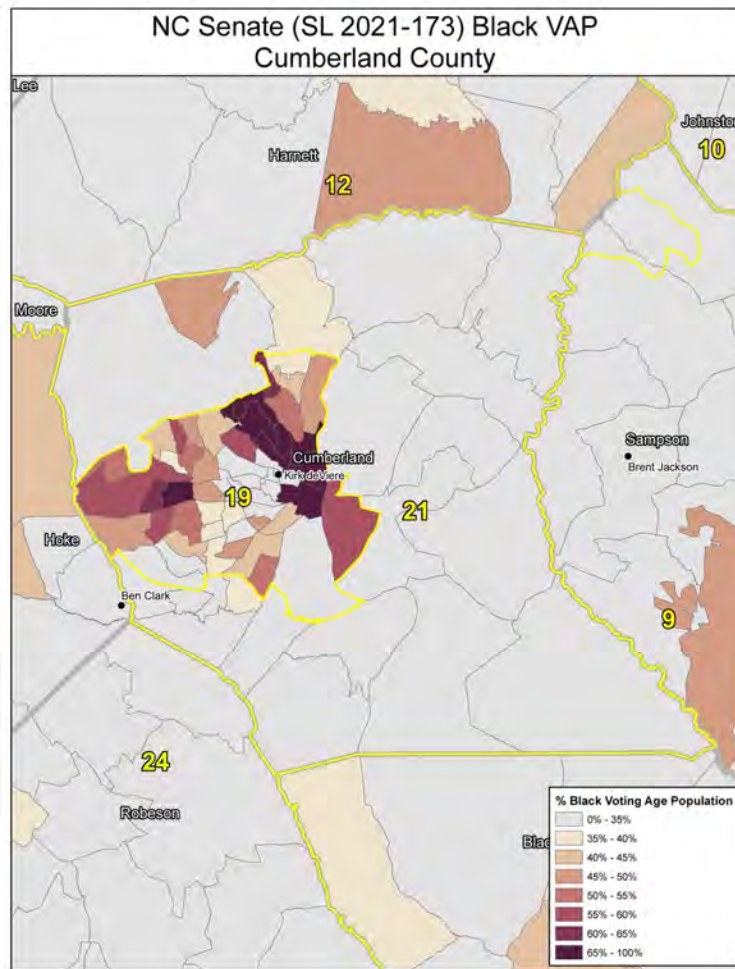
111. Legislative Defendants asserted that both cluster options were legal. The cluster at the top (D1, which includes Carteret, Pamlico, Washington, Chowan, Hyde, Dare, Perquimans, and Pasquotank counties) would have maintained a performing crossover district that allowed

Black voters to elect their candidate of choice in eastern North Carolina. The cluster below (D2, which includes Carteret, Pamlico, Washington, Chowan, Hyde, Martin, Halifax, and Warren counties) would destroy the ability of Black voters to elect their candidate of choice and ensure the defeat of their current preferred representative, Senator Bazemore. Legislative Defendants were warned that the selecting the second cluster would dramatically reduce the BVAP in the district and would destroy an effective crossover district. They destroyed it anyway, and offered no other justification.

112. Cumberland County presents another example where heavily Black and heavily Democratic areas were packed and cracked with near-surgical precision to create Senate Districts 19 and 21.

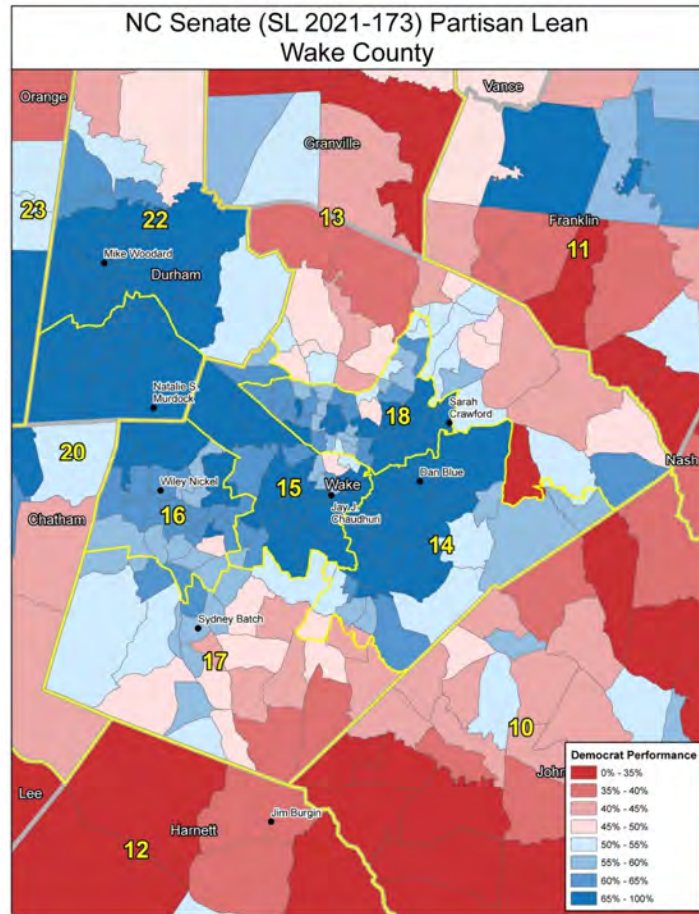


113. The correlation of these lines to the make-up of BVAP also presents strong evidence of intentional racial discrimination in violation of Article I, Section 19.



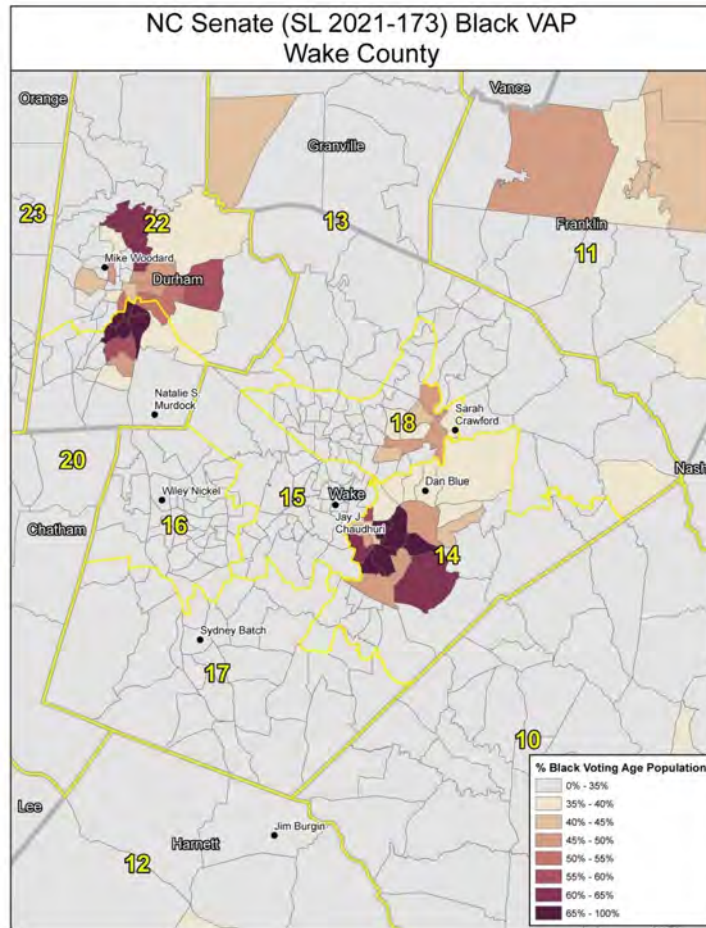
[REST OF PAGE INTENTIONALLY LEFT BLANK]

114. In Wake County, the Legislature drew Senate districts that cracked Democratic voters into various senate districts (SD 15, 16, 17) within the county, while packing them into others (SD 14). This would only be possible with the utilization of political data or a deep familiarity with the political makeup of Wake County, either of which belies the Legislative Defendants’ claims that partisan data was not used to draw districts.



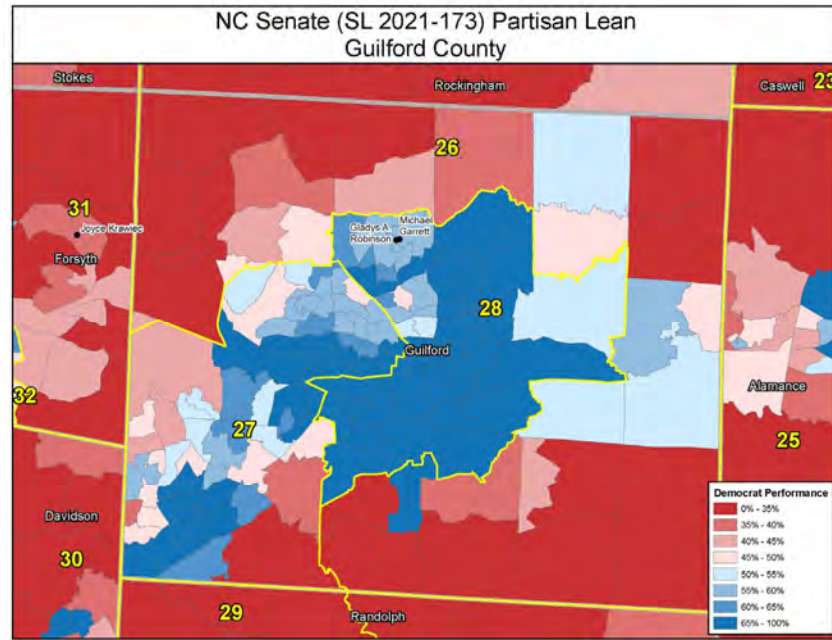
[REST OF PAGE INTENTIONALLY LEFT BLANK]

115. The Legislature also drew maps that explicitly followed the contours of the Black electorate in Wake County, especially in Senate District 14 and Senate District 18. The precise way that these districts were drawn is only possible by looking at racial data.

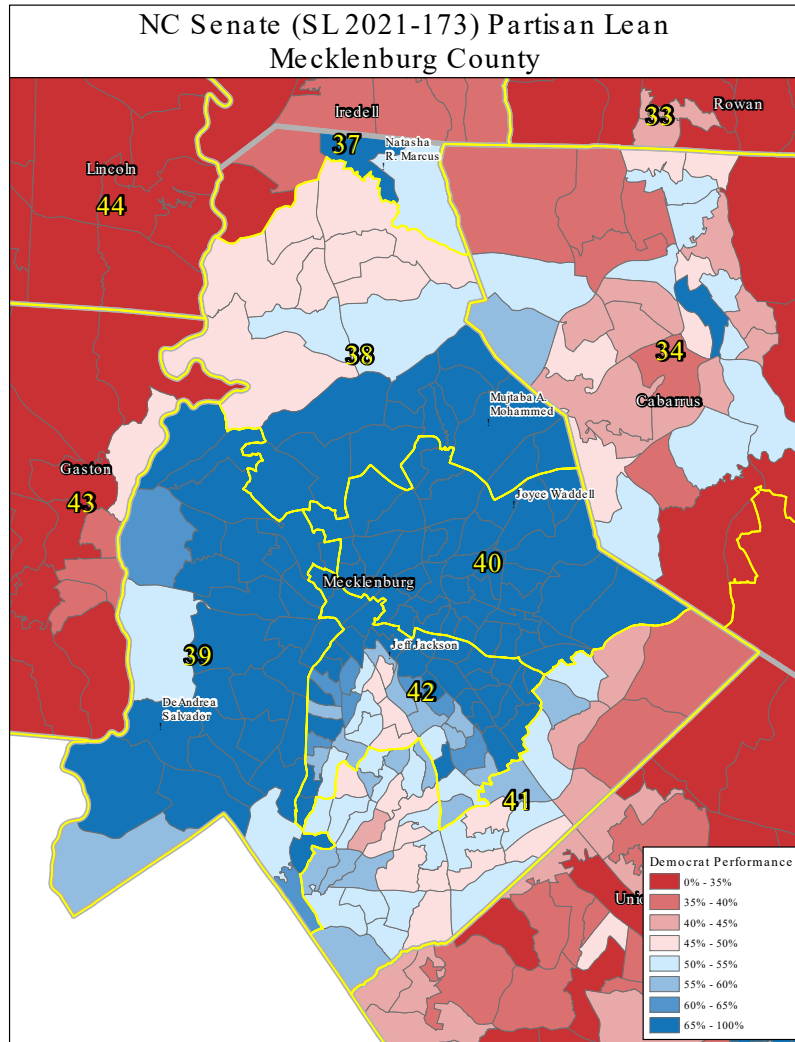


[REST OF PAGE INTENTIONALLY LEFT BLANK]

116. In Guilford County, the Legislature also surgically cracked Democratic voters into various Senate districts (SD 27 and 28) in a manner that is not possible without looking at political data.



117. In Mecklenburg/Iredell Counties, map drawers intentionally double-bunked Senator Marcus in Senate District 37, which leadership later unsuccessfully attempted to use as a bargaining chip to garner Democratic support for their gerrymanders. Map drawers also purposefully drew two Republican-influence districts in the north and south of Mecklenburg County first, and then proceeded to pack all remaining Democratic areas together, in order to increase the influence of Republican voters overall.

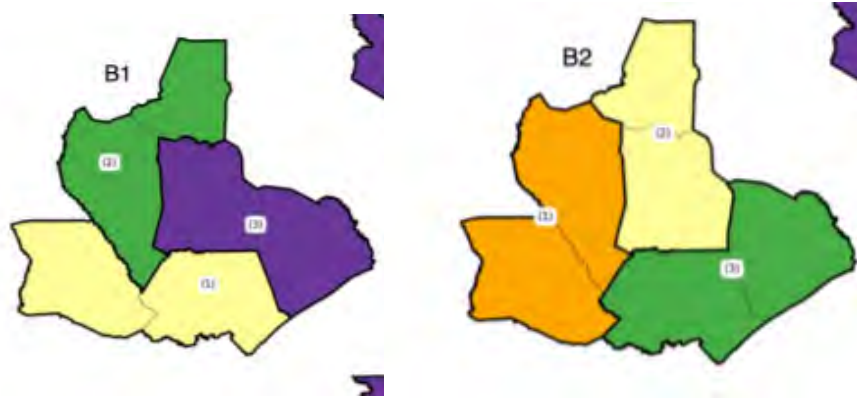


State House Districts at Issue

118. The State House Map demonstrates cracking and packing of Democratic-performing areas that would not be possible without political data (or a deep familiarity with the politics of certain areas, which belies the claims of not using any partisan data).

119. While the entire design of the State House map is necessary to effectuating the unconstitutional and discriminatory effect orchestrated by Legislative Defendants, the following districts exemplify the packing and strategies used – strategies that highlight the intentional manipulation of district lines in order to achieve the unconstitutional goals. They likewise demonstrate the racially discriminatory efforts at play.

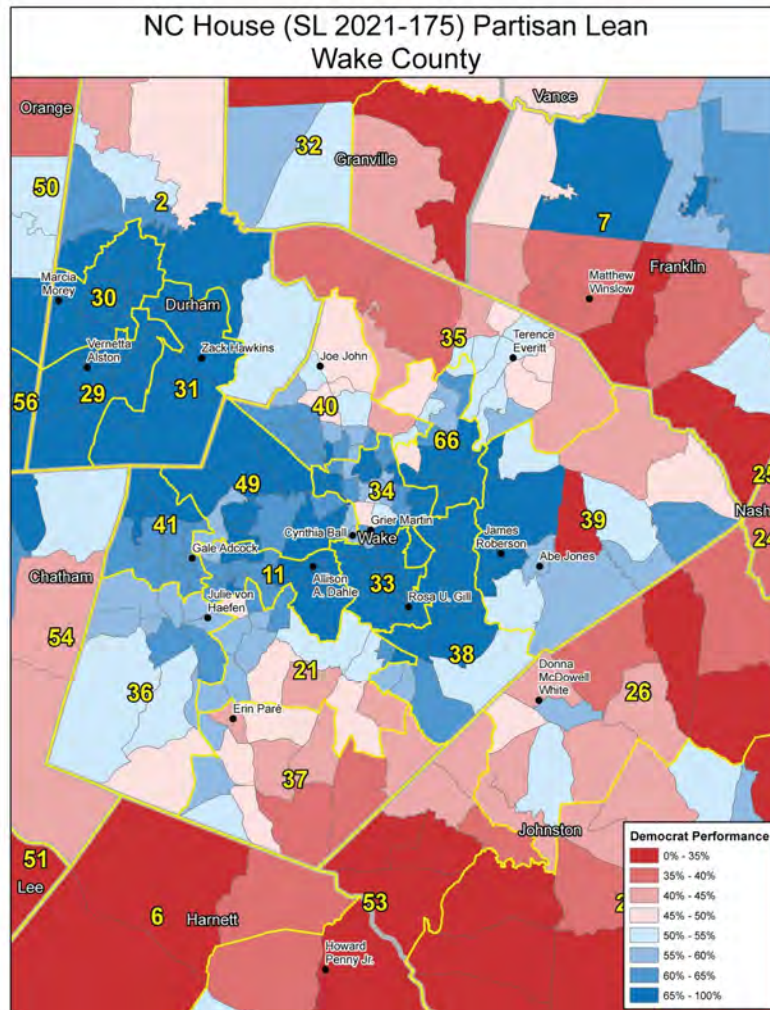
120. The Legislature was presented with two possible clusters for a House district based in Wayne County (for a seat currently held by Rep. Raymond Smith). The two cluster options are represented below:



121. Legislative Defendants asserted that both cluster options were legal. The cluster to the right (B2) would have had a better chance of maintaining a performing crossover district that allowed Black voters to elect their candidate of choice and would have better respected communities of interest. The cluster to the left (B1) would destroy the ability of Black voters to elect their candidate of choice and ensure the defeat of their current preferred representative, Representative Smith. Legislative Defendants were warned that the selecting the cluster on the left would reduce the BVAP in the district and would destroy an effective crossover district. They destroyed it anyway.

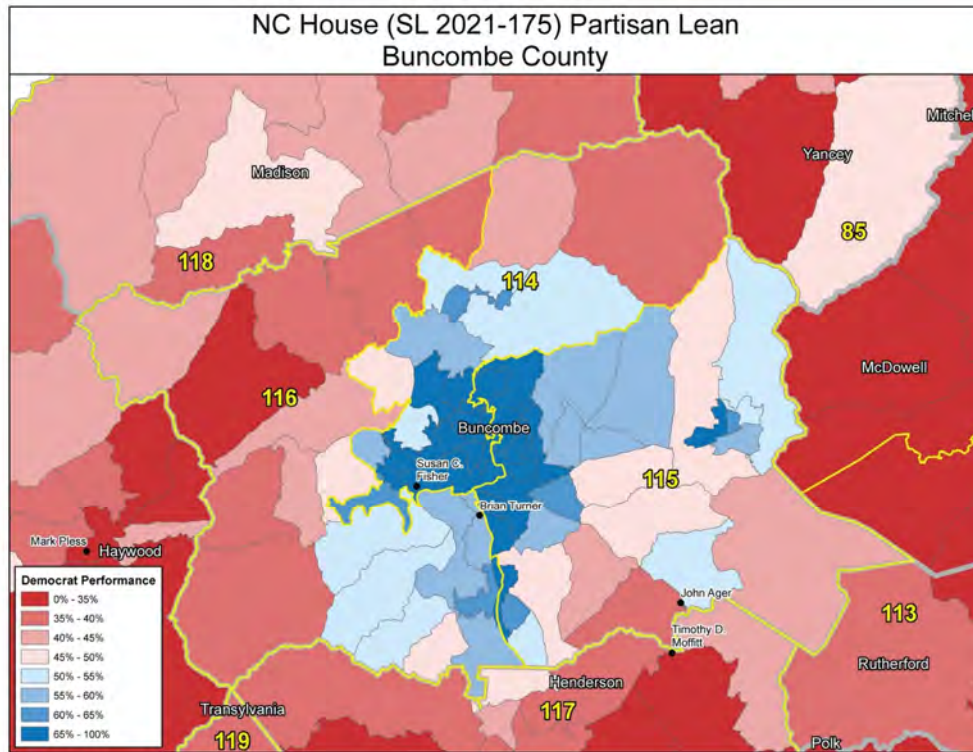
[REST OF PAGE INTENTIONALLY LEFT BLANK]

122. In Wake County, House District 35 also demonstrates all the hallmarks of a partisan gerrymander. While the district is still anchored in Wake Forest, the district shifted substantially to capture the most conservative VTDs in this part of Wake County. It is simply not plausible that such a district, presenting one of the few configurations of VTDs that would enable a Republican to win in north Wake County, was created without relying on partisan data.

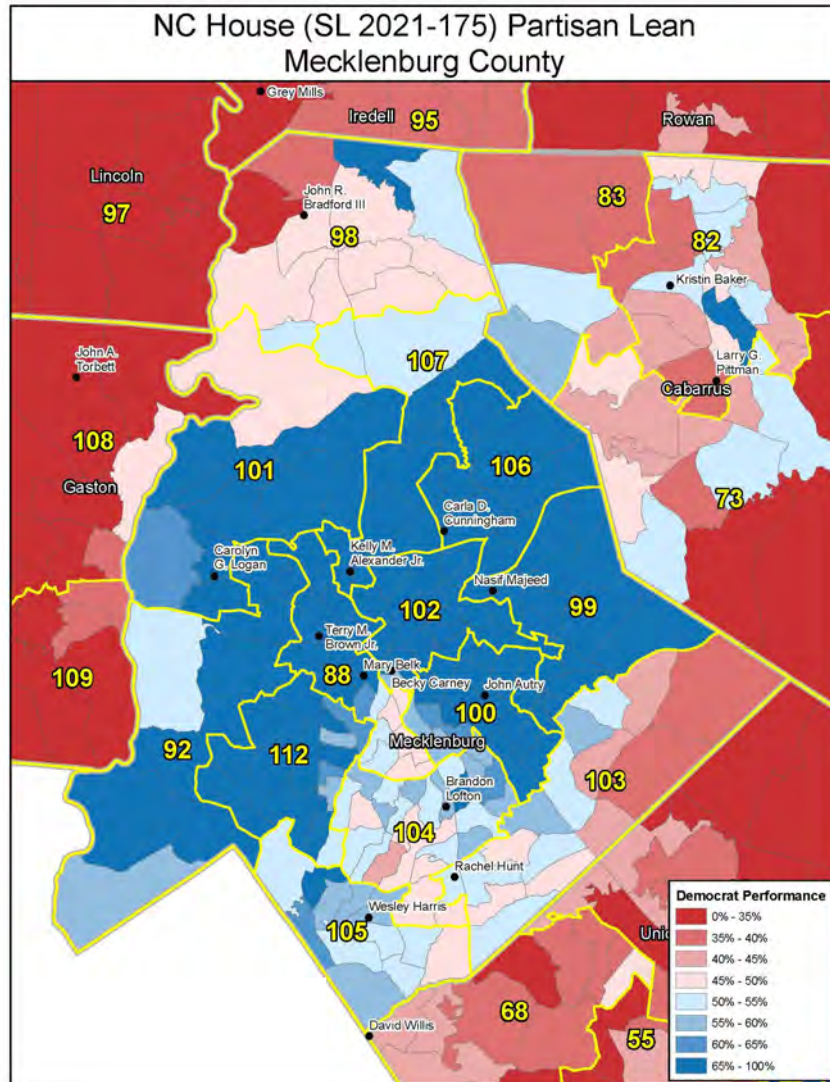


123. In Buncombe County, Legislative Defendants drew House Districts 114, 115, and 116 along precise partisan lines to give Republicans an opportunity to win one of the county's three districts. In order to achieve this, House District 116 loops around the perimeter of the county, staying out of Asheville in order to sweep up the most Republican-leaning areas. The degree to

which House District 116 steers clear of predominantly Democratic VTDs would not be possible without considering partisan data.

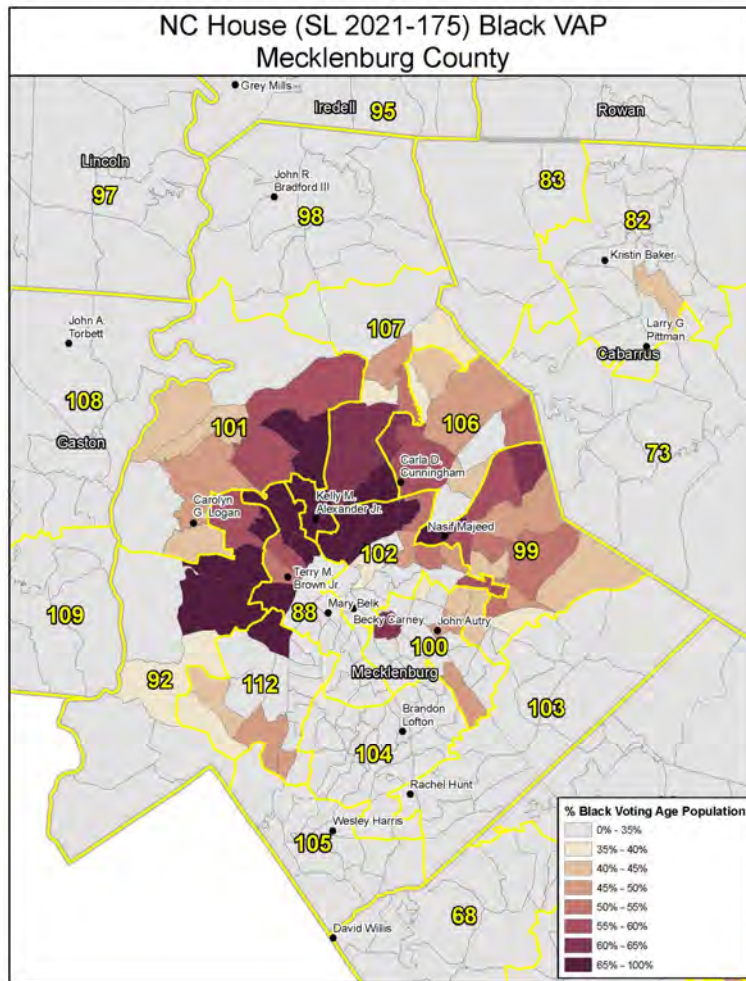


124. In Mecklenburg County, the House district lines closely mirror the partisan breakdowns of the county, particularly at the northern and southern ends of the county. House District 98 in the northern part of the county skirts around Democratic VTDs to keep the district as Republican as possible; House District 103 does the same along the southern border of the county. House District 104 also weaves through southern Mecklenburg County, picking up as many Republican-leaning VTDs as possible to give Republicans a chance to win the district. None of these configurations would be possible without considering partisan data.

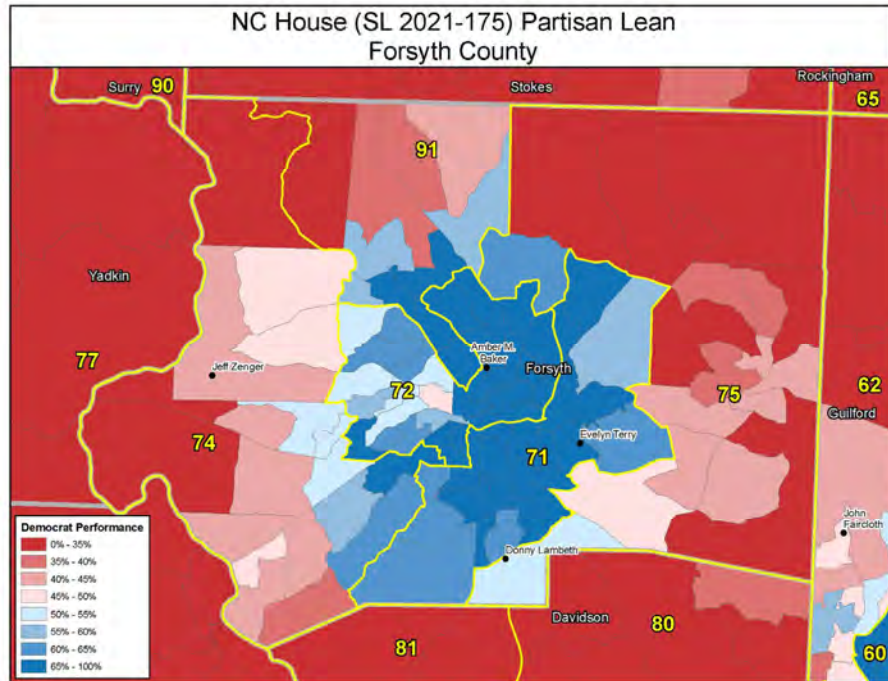


[REST OF PAGE INTENTIONALLY LEFT BLANK]

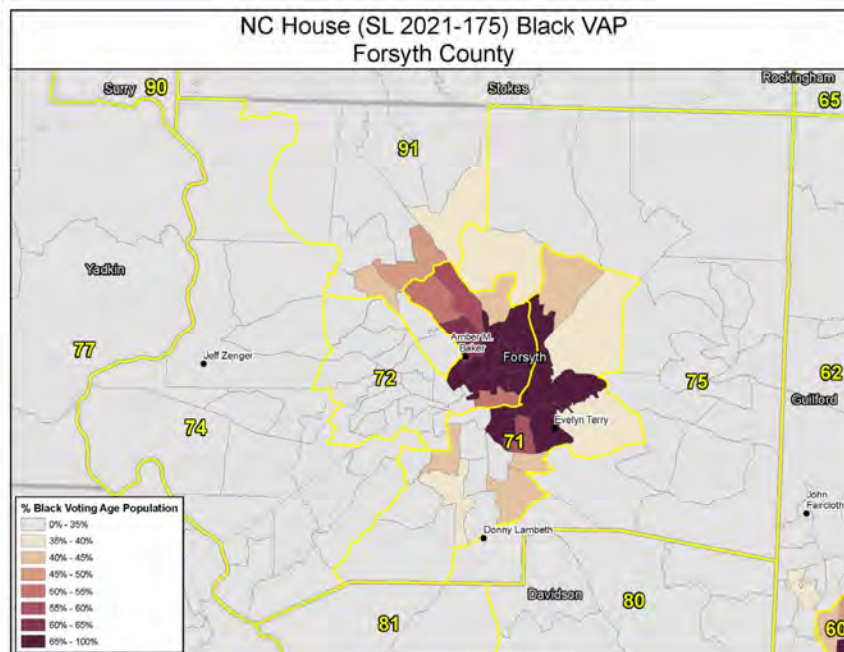
125. In a similar vein, the Legislature drew House districts within Mecklenburg County that cracked Black voters into a myriad of different districts, breaking apart communities of interest.



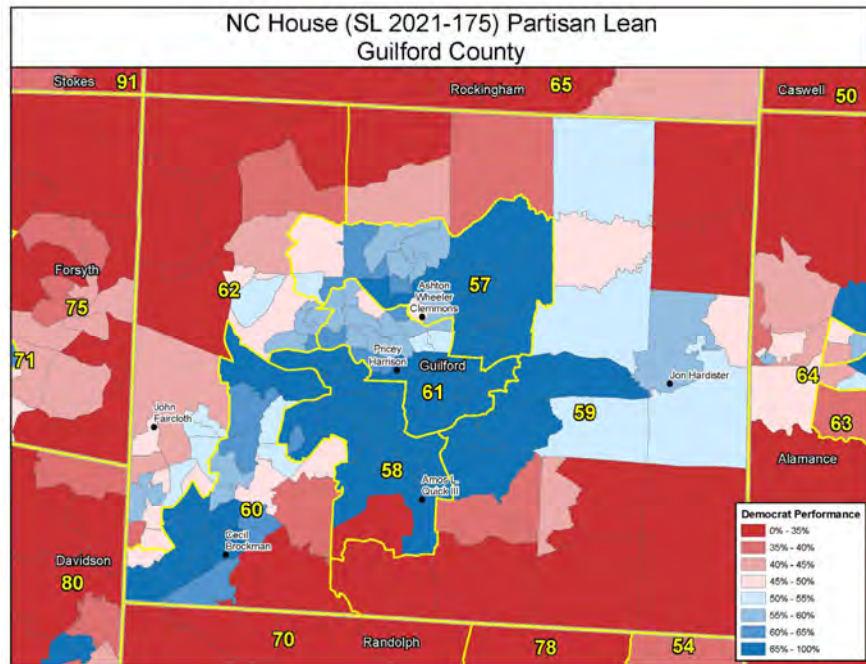
126. In Forsyth County, the Legislature drew maps that cracked Democratic voters into various House districts, some that break apart communities of interest, specifically House Districts 72 and 91. This cracking is only possible if political data was utilized in drawing these districts.



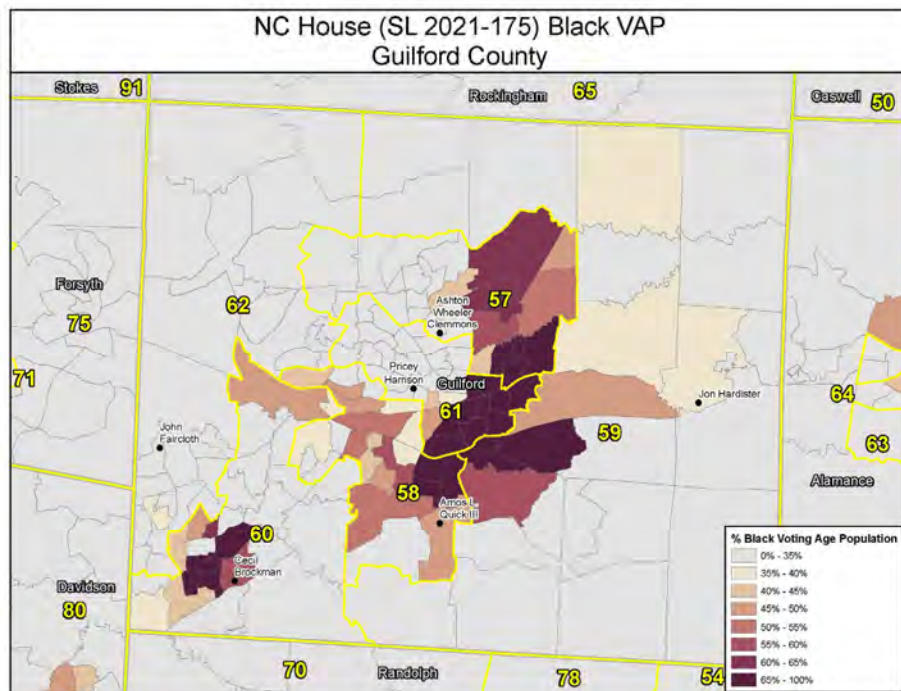
127. Similar to the partisan cracking described above, the Legislature also cracked Black voters in Forsyth County between Districts 71 and 72, drawing district lines in a manner that followed the contours of the Black electorate in northwest Forsyth.



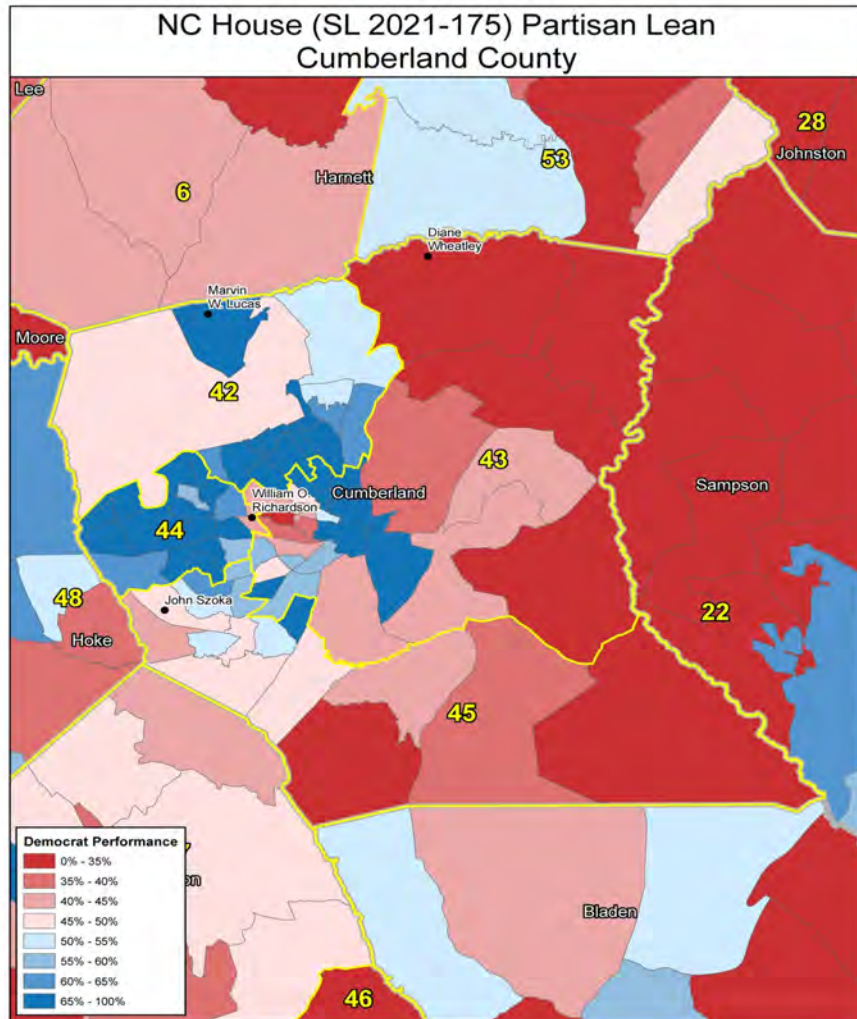
128. Similar to Forsyth County, the Legislature also cracked Guilford County Democratic voters, specifically in the western part of the county.



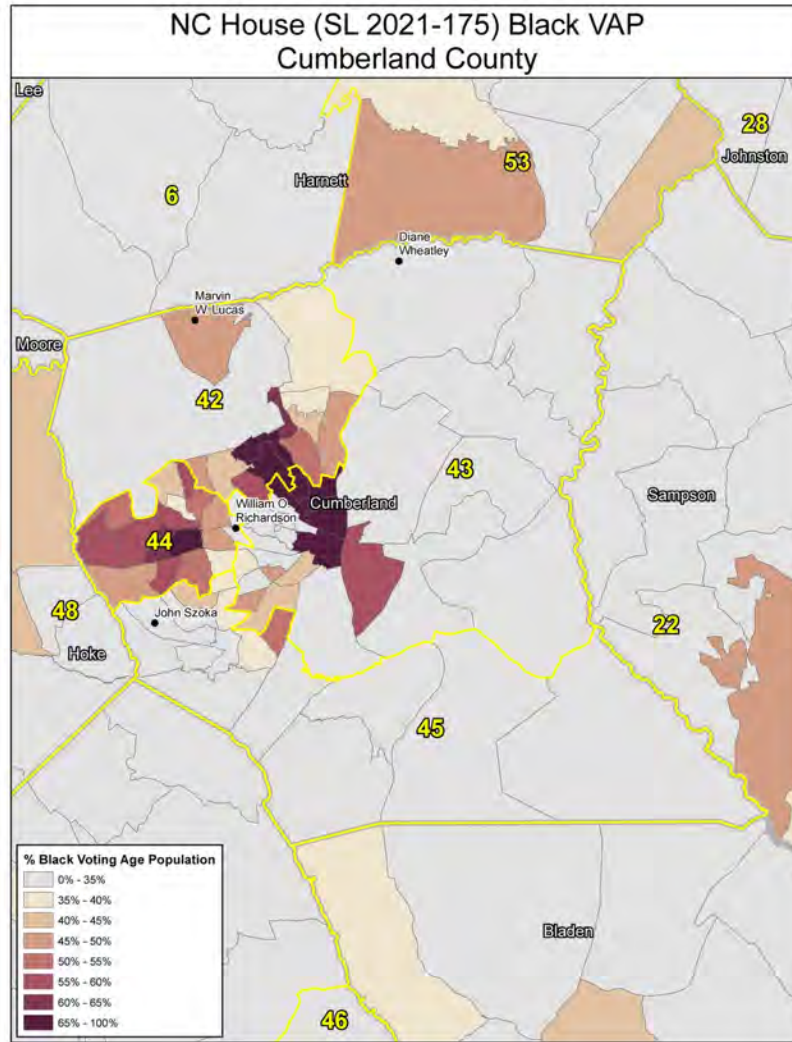
129. In a similar vein, the Legislature also cracked the Black electorate in Guilford County splitting communities of interest in the eastern part of the county.



130. In Cumberland County, the Legislature also cracked Democratic voters in a similar manner to Forsyth and Guilford Counties. Democratic voters on the eastern side of the county are split into four different districts in order to dilute the power of Democratic voters in the eastern part of the county overall.



131. The Legislature also cracked the Black electorate between House Districts 42 and 43, but packed Black voters into District 44. The only way that these lines could be drawn was by looking at racial data.



E. The Challenged Maps Will Have a Durable and Extreme Discriminatory Effect.

132. The enacted maps produce political outcomes that are extreme statistical outliers and political outcomes of the elections are unlikely to change even in swing election years – that is, they are very effective partisan gerrymanders.

133. The Congressional Map is likely to elect 10 Republicans and 4 Democrats, although Congressional District 2 has now been rated a Toss Up district, so it is entirely possible that the map will elect 11 Republicans and 3 Democrats. This is a 71.4%-78.6% Republican control of the Congressional delegation in a state where most statewide elections are very close to 50-50.

134. Likewise, in the Senate, the districts are drawn to ensure that Republicans cannot lose a majority in the Senate, and should they pick up just a few seats (in the small number of competitive seats to begin with), they could likely restore their supermajority. That is, again, in a 50-50 state, Republicans would be poised to control at least three-fifths or more of the Senate.

135. Similarly, in the State House, the district lines are drawn so that it is essentially impossible for Democrats to obtain a majority in that chamber, despite the fact that North Carolina is an evenly divided state. The number of Republicans elected to the State House would, through the entire decade of use of this map, be expected to greatly exceed and outperform their statewide vote share.

F. No Other Neutral Reason Explains the Extreme Partisan Discrimination.

136. No purported reason that might be offered to explain the extreme partisan gerrymander is plausible or factual.

137. To the extent that Democratic voters are concentrated in urban areas, that did not require Legislative Defendants to crack Democratic and Black voters in Guilford County or to crack Democratic voters in Wake County congressional districts, as an example.

138. The Whole County Provision likewise does not require or produce the extreme partisan outcomes observed in the three challenged maps. Repeatedly, when Legislative Defendants chose between county clusters that they said were legal, they consistently chose the clusters that would perform better for Republicans and worse for Democrats (and often the clusters that would perform worse for Black voters). Moreover, within the clusters, the line-drawing was designed to maximize Republican advantage.

139. And even if, hypothetically, the leadership of the North Carolina General Assembly had not chosen to intentionally destroy a number of performing crossover districts in violation of Art. 1, Section 19 as they did, these maps would still be extreme partisan gerrymanders.

G. Legislative Defendants Timed their Redistricting Process to Evade Judicial Review and Stifle Public Input.

140. Plaintiff repeats and re-alleges the allegations contained in the preceding paragraphs.

141. On February 12, 2021, the U.S. Census Bureau announced that its release of P.L. 94-171 redistricting data would be delayed by the COVID-19 pandemic, and would not be released until the fall of 2021.³⁷ On February 24, 2021, the North Carolina State Board of Elections Executive Director Karen Brinson Bell advised the House Elections Law and Campaign Finance Reform Committee that this delay would require an election schedule change in light of the time required to prepare for candidate filing and ballot styles. Director Brinson Bell advised the Committee to move the 2022 primary to a May 3 primary, July 12 second primary, and November 8 general election.³⁸

142. The North Carolina General Assembly did not respond to Director Brinson Bell’s recommendation to postpone the March 2022 primaries to May 3. The General Assembly did, however, extend the schedule for municipal elections for those municipalities similarly impacted by the Census delay. *See* S.B. 722, S.L. 2021-56 (2021).

143. The Legislative Defendants thereafter unnecessarily and intentionally narrowed the window for public engagement in redistricting by waiting until the last moment to plan and begin the redistricting process. This delay caused avoidable confusion and obstructed the opportunity for meaningful public comment.

³⁷ Press Release, U.S. Census Bureau, Census Bureau Statement on Redistricting Data Timeline (Feb. 12, 2021), <https://www.census.gov/newsroom/press-releases/2021/statement-redistricting-data-timeline.html>.

³⁸ North Carolina State Board of Elections, *A Look Back at North Carolina’s Historic 2020 Election & Looking Ahead at 2021, Presentation to House Election Law & Campaign Finance Reform Committee* at p. 14, Feb. 24, 2021, 2021–2022 Session (N.C. 2021), <https://www.ncleg.gov/documentsites/committees/House2021-21/02-24-21/House%20Elections%20Committee%20Presentation%202-24-2021%20FINALv2.pdf>.

144. Despite having received notice in February 2021 from the U.S. Census Bureau about the delays in releasing Census data, and the resulting impact on election schedules, the Redistricting Chairs failed to convene any meetings of the Redistricting Committees to plan for the 2021 redistricting until the eve of Census data’s release in August of 2021. The Redistricting Chairs and Redistricting Committees failed to propose any schedule for the redistricting process or notice of public comment related to the redistricting process, and failed to publicly propose or consider redistricting criteria, until the first meeting on August 5, 2021. Any and all of these steps could have been taken at any point after the Long Session was convened in January 2021.

145. When the Redistricting Committees finally met on August 5, 2021, the Redistricting Chairs initiated an unnecessarily rushed and disorganized redistricting process that has stifled public comment and lent uncertainty to what could have been an organized and predictable process. For example:

- a. The Redistricting Chairs released proposed redistricting criteria on August 9, 2021, and provided the public less than 24-hours-notice to attend an 8:30am, in-person only hearing on a weekday (August 10, 2021) for public comment on the proposed redistricting criteria.³⁹ The Redistricting Committees then voted to accept that criteria barely three days (August 12) after it was first proposed.
- b. The Redistricting Chairs waited until September 1 to announce a schedule for public hearings, held from September 8 through September 30, 2021.

³⁹ *Joint Meeting of the Senate Redistricting and Elections Committee and the House Redistricting Committee for Discussion of Schedule for Public Hearings*, Aug. 18, 2021, 2021–2022 Session (N.C. 2021), https://www.ncleg.gov/documentsites/committees/Senate2021-154/2021/08-18-2021/Senate%20Committee%20on%20Redistricting%20and%20Elections%20Agenda%20for%208-18-21%209_00%20AM.pdf.

These hearings were ineffectively noticed, including errors in location that caused confusion and obstructed public comment. For example, the Redistricting Chairs provided the wrong location information in the notice for the September 8, 2021 hearing in Caldwell County, telling the public it was to be held at Caldwell County Community College when it was actually being held miles away at the JE Broyhill Civic Center. There was low turnout at this hearing, and several individuals who had signed up to speak at this hearing did not appear when called.

- c. As compared to prior redistricting cycles, the Redistricting Committees provided materially less opportunities for public comment and involvement by holding only 13 public hearings as compared to over 60 hearings held in the 2011 cycle.
- d. The Redistricting Chairs announced the aforementioned required county groupings from the Duke Academic Paper on October 5, 2021, without any prior discussion or opportunity for public input.
- e. The Redistricting Chairs failed to provide the public or Legislatures with any schedule for drawing maps, or even a deadline by which maps would need to be proposed, lending uncertainty and unnecessary delay in the map-drawing process. As of noon on October 29, 2021, Legislators were still drawing proposed maps and no deadline or schedule for the submission or vote on proposed maps had been announced by the Redistricting Chairs. Upon information and belief, Defendant Hise was revising a proposed

Senate map on October 28 in a meeting for which there was no prior public notice.

- f. The Redistricting Chairs provided less than three business days' notice of two public hearings on proposed maps on October 25 and 26, 2021, failing to make all the maps that would be considered available for public view when available. For example, Senate map "SST-4" was, upon information and belief, drafted by October 14, but was not publicly available until October 19 and was published without any public announcement. House map "HBK-1" was not public until the afternoon of Friday, October 22, with no public announcement. Overall, Legislative Defendants provided the public with just three days to review and analyze a total of ten maps.
- g. The House Redistricting Committee continued to schedule map drawing sessions up until November 3, 2021, even though on October 28, notice was provided – and later rescinded by – the House Committee on Rules, Calendar, and Operations for House Bill 976 ("HB976") titled House Redistricting Plan 2021 without a corresponding map. Later that day, the House Redistricting committee gave notice that HB976 would be heard on November 1 still with no corresponding map. In the afternoon of October 29, the Senate Committee on Redistricting and Elections provided notice to hear three proposed redistricting bills: Senate Bill 737 ("SB737") titled Congressional Redistricting Plan 2021-CCH-6, Senate Bill 738 ("SB737") titled Congressional Redistricting Plan 2021-CST-8, and Senate Bill 740 ("SB740") titled Congressional Redistricting Plan 2021/CST-13, for

November 1 at 9:00am. On October 29, the Senate Committee on Redistricting and Elections sent notice to hear Senate Bill (“SB739”) titled Senate Redistricting 2021-SST-13 for November 2.

- h. On November 1, the Redistricting Chairs asked committee members to vote no on SB738 and SB740, the two Congressional maps drawn by Democrat members, the two Congressional maps drawn by Democrat members.
- i. The Redistricting Chairs continued the pattern of providing the public or Legislatures with confusing and inadequate notice on November 1 when the House Redistricting committee postponed hearing HB976 three times in less than three hours.

146. By designing a process that stifled public comment and caused uncertainty and unnecessary chaos to the redistricting process, the delay caused by Legislative Defendants will have severe consequences for voters’ ability to elect candidates of their choice.

147. Pursuant to Sections 6 and 7 of Article II of the North Carolina Constitution, candidates for North Carolina House and Senate must have resided in the district for one year immediately prior to the General Election. The General Election occurs on November 8, 2022, and thus candidates must reside in their district starting on November 8, 2021. Due to Legislative Defendants’ unjustified delay in convening the Redistricting Committees until August, the implementation of a confusing and uncertain public comment process, and the late adoption of final redistricting maps, potential candidates had insufficient time to change their residency if required by changes in the final maps. The inability of potential candidates to meet residency requirements due to late-adopted maps will impede the ability for voters of color, including the voters served by Plaintiff Common Cause, to elect candidates of their choice.

148. Upon information and belief, Legislative Defendants acted to ensure that members of their political party would not be mal-impacted by the one-year residency requirement, and gave forewarning to Legislators of their political party who they anticipated would be impacted by district lines long before the Redistricting Committees were convened in August 2021. Upon information and belief, Senator McInnis moved residencies in mid-2021, before the Redistricting Committees were convened, in order to avoid double bunking when a new Senate map would be enacted.⁴⁰

149. Legislative Defendants also deliberately misrepresented public testimony offered during the public hearings held in September 2021, before draft maps had been released, in an attempt to justify their maps when they were voted on in November. Member of the public that provided comment consistently asked for an end to gerrymandering, and further requested that lawmakers adhere to state and federal law, including those such as the VRA meant to protect voters of color. However, Legislative Defendants cherry picked and misrepresented testimony, and specifically testimony of Black residents, in order to justify their unlawful districts. For example, in a November 1, 2021 Senate Redistricting Committee meeting, Defendant Daniel asserted that public input from Moore County resident Maurice Holland Jr. informed the formation of a “Sandhills” district in the Congressional map. However, Mr. Holland spoke specifically in favor of proposed Congressional map CBK-4 which grouped Moore, Hoke, Cumberland, Scotland, Robeson, and parts of Harnett and Richmond counties together,⁴¹ while SB740 trisects this county

⁴⁰ See Dallas Woodhouse, “Veteran GOP State Senators Headed for High Profile Primary,” CAROLINA JOURNAL (Nov. 11, 2021) (“McInnis finalized his move late this summer when it became clear that he would be double bunked with another GOP senator from a considerably larger county.”), <https://www.carolinajournal.com/news-article/veteran-gop-state-senators-headed-for-high-profile-primary/>.

⁴¹ See *2021-10-25 Redistricting Public Hearing – Wake, Caldwell, New Hanover* at 2:17:02, YOUTUBE (Nov. 1, 2021) <https://www.youtube.com/watch?v=njisLoqWuT0>.

grouping through the middle between Congressional Districts 3, 4 and 8.⁴² Mr. Holland also spoke against proposed Senate Map SST-4,⁴³ calling districts 21 and 22 in Moore and Cumberland county “extreme,” and against proposed House Map HBK-11 (dividing Moore County into 3 districts).⁴⁴ But the Enacted maps drawn and proposed by Legislative Defendants directly contradict Mr. Holland’s expressed wishes; the Senate Map largely retains the “extreme” districts in SD 21 and SD19, and the House map still trisects Moore County between HD 51, HD 78, and HD 52. This misrepresentation of public testimony gives rise to an inference of bad faith.

150. Overall, the actions of Legislative Defendants, or lack thereof, have caused significant uncertainty for potential candidates running for legislative office to the detriment of the candidates of choice for voters of color, and while acting to insulate members of their own party. Upon information and belief, Legislative Defendants’ unnecessarily delay and chaotic process will prevent voters of color from electing candidates of their choice due to the burden and uncertainty currently facing new candidates. Upon information and belief, Legislative Defendants’ delay will also restrain Plaintiff from educating their members and voters on who is running for legislative office in a timely manner.

CLAIM I

DECLARATORY JUDGMENT ACT

151. Plaintiff repeats and re-alleges the allegations contained in the preceding paragraphs.

⁴² See https://www.ncleg.gov/Files/GIS/Plans_Main/Congress_2021/SL%202021-174%20Congress%20-%2011%20x%2017%20Map.pdf.

⁴³ Available at https://www.ncleg.gov/documentsites/committees/Senate2021-154/2021/Member%20Submitted%20Maps/SST-4/SST-4_11x17.pdf

⁴⁴ *Id.*

152. The North Carolina Declaratory Judgment statutes, N.C.G.S. Chapter 1, Article 26, expressly allows for the determination of legal rights, and must be liberally construed and administered to afford “relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” N.C.G.S. §§ 1-254, 1-264. Where a declaratory judgment claim is premised on “issues of great public interest,” the court should “adopt and apply the broadened parameters of a declaratory judgment action.” *Hoke Cty Bd. of Educ. v. State*, 358 N.C. 605, 615-16 (2004).

153. Article I, Section 3 of the North Carolina Constitution provides that the rights of the people of North Carolina “shall be exercised in pursuance of law and consistently with the Constitution of the United States.” Article I, Section 5 of the North Carolina Constitution prohibits a law or ordinance in North Carolina from contravening the federal Constitution. Together, these provisions “delineate[] the interplay between federal and state law.” *Stephenson I*, 355 N.C. at 370. As applied to redistricting, “the State retains significant discretion when formulating legislative districts so long as the ‘effect’ of districts created pursuant to the ‘whole county’ criterion or other constitutional requirement does not dilute minority voting strength in violation of federal law.” *Id.*

154. Legislative Defendants have adopted redistricting criteria that prohibit the use of racial data, and have repeatedly asserted – incorrectly – that applicable law does not require the consideration of racial data to ensure compliance with the North Carolina Constitution or other applicable law.

155. Legislative Defendants have further mandated the use of designated county clusters for state Senate and House maps that destroyed effective crossover districts, in violation of Article I, Section 19, without ensuring compliance with North Carolina Constitutional requirements and following the unequivocal instructions for the redistricting process articulated in *Stephenson v. Bartlett*. Legislative Defendants have asserted themselves, and through counsel, that state law does

not require them to undertake the first step in *Stephenson* by making the analysis of racial data necessary to ascertain what districts are required by the VRA (including prohibiting intentional racial discrimination, also required by Article I, Section 19) before drawing all others.

156. The intentional action, and inaction, by Legislative Defendants has created insecurity and uncertainty as to the rights of the members and voters served by Plaintiff Common Cause that will result in, and which indicate an intent to cause, violations of their fundamental right to fair representation and freedom from intentional discrimination.

157. Accordingly, Plaintiff seeks a declaratory ruling that Plaintiff and its members and the voters it serves are entitled to, and Legislative Defendants have a duty to undertake, a redistricting process that adheres the requirements of Article II, Sections 3 and 5 of the North Carolina Constitution as set forth in *Stephenson v. Bartlett*, including a requirement to undertake the analysis of racial data necessary to ascertain what districts are required by the VRA.

158. The Declaratory Judgment Act provides for further relief “whenever necessary or proper.” N.C.G.S. § 1-259.

159. Moreover, Plaintiff seeks injunctive relief requiring the North Carolina General Assembly to adhere to the requirements of Article II, Sections 3 and 5, as set forth in *Stephenson v. Bartlett*, and specifically to perform a meaningful attempt to determine whether there are any districts compelled by the VRA, which, at a minimum, requires the consideration of racial data to understand changing demographics and performing a racially polarized voting analysis where the racial demographics indicate potential VRA problems before designating county clusters required in Senate and House legislative maps.

160. Plaintiff further seeks injunctive relief enjoining SBE Defendants from administering any election utilizing the districts set forth in SB739 and HB976 and/or enjoining

the SBE Defendants from administering the Statewide Primary elections until Legislative Defendants or the General Assembly have fulfilled their duty under *Stephenson*.

CLAIM II

INTENTIONAL RACIAL DISCRIMINATION IN VIOLATION OF ARTICLE I, SECTION 19 OF THE NORTH CAROLINA CONSTITUTION

161. Plaintiff relies herein upon all of the paragraphs of this Complaint.

162. The Equal Protection Clause, Article I, Section 19 of the North Carolina Constitution, states that “[n]o person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.” This provision prevents a state and its officials from discriminatorily or arbitrarily treating qualified voters differently on account of their race or skin color.

163. North Carolina’s Equal Protection Clause affords broader protections to its citizens in the voting rights context than the U.S. Constitution’s equal protection provisions. *See Stephenson v. I*, 355 N.C. at 376–80, 381 n.6; *Blankenship v. Bartlett*, 363 N.C. 518, 523 (2009).

164. The Supreme Court of North Carolina has held that “[i]t is well settled in [North Carolina] that the right to vote on equal terms is a fundamental right.” *Stephenson I*, 355 N.C. at 378 (internal quotation marks omitted).

165. To that end, North Carolina’s Equal Protection Clause protects the right to “substantially equal voting power.” *Id.* at 379.

166. Legislative Defendants’ intentional discrimination against Plaintiff’s members of color and the voters of color that Plaintiff serves in devising state Legislative maps is plain: Legislative Defendants’ deliberately and intentionally orchestrated a redistricting process that unlawfully and blatantly disregarded express direction from the North Carolina Supreme Court in

Stephenson v. Bartlett, with the intent and effect of preventing lawmakers from protecting voters of color from harm in the redistricting process.

167. Any reasonable legislature, including the Legislative Defendants, could have surmised that prohibiting any formal use of racial data in the drawing or consideration of maps and that failing to undertake the analysis of racial data set forth under *Stephenson* would lead to – and have the clear and unavoidable effect of – the intentional destruction of functioning crossover districts for voters of color and reduce their ability to elect candidates of their choice, thus disproportionately limiting their ability to elect candidates of choice as compared to White voters. *See McCrory*, 831 F.3d at 227-28 (“[T]he removal of public assistance IDs in particular was suspect, because a reasonable legislator would be aware of the socioeconomic disparities endured by African Americans and could have surmised that African Americans would be more likely to possess this form of ID” (internal quotations and citations omitted)). Upon information and belief, Legislative Defendants intentionally orchestrated an unlawful redistricting process that prohibited any other member from formally considering or using the data needed to prevent the destruction of effective districts for voters of color or the drawing of district lines that would disproportionately reduce the ability of voters of color to elect their candidates of choice.

168. Furthermore, by enacting and implementing SB740, SB739, and HB976, Defendants have purposefully discriminated against Black voters as alleged in the above paragraphs. A motivating purpose behind SB740, SB739, and HB976 was to undermine the voting power of Black voters and reduce Black representation in the Legislature. At the time these laws were enacted, the General Assembly had before it evidence that Black voters would be harmed by these laws due to packing and cracking in certain areas within these maps. The Legislature enacted SB740, SB739, and HB976 with minimal public debate and on an extremely and unnecessarily

compressed legislative schedule, with the bills passing both houses of the Legislature only days after their submission.

169. Racially polarized voting exists in North Carolina, both historically and today, such that the race of voters correlates with the selection of certain candidate or candidates. *McCrory*, 831 F.3d at 225-26 (noting African American voters overwhelmingly support Democratic candidates). Any reasonable legislator, including Legislative Defendants, would understand this correlation. Upon information and believe, Legislative Defendants sought to target and discriminate against voters of color in order to receive the “political payoff” that would result from the racially polarized voting. *McCrory*, 831 F.3d at 222.

170. Both the discriminatory effect of these statutes and their legislative history are relevant factors in analyzing them for discriminatory intent. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977).

171. A motivating purpose behind Legislative Defendants’ intent to orchestrate their unlawful redistricting process, and in the Legislature’s drawing and enactment of SB740, SB739, and HB976, was to draw districts that will not provide Black voters, including the members and voters served by Plaintiff Common Cause, an equal opportunity to elect their preferred candidates, will dilute the voting power of Black voters, and will make it more difficult for these voters to elect their candidates of choice across the state.

172. Legislative Defendants’ unlawful redistricting process and the enacted maps SB740, SB730, and HB976 will undermine and/or prevent the ability of Black voters, including the members and voters served by Plaintiff Common Cause, to elect their candidates of choice as they are able to under current benchmark state Legislative districts, as specified in the above paragraphs.

173. Legislative Defendants’ designated county clusters for state Legislative maps, and the enacted maps in SB740, SB739, and HB976 intentionally and impermissibly discriminate against the members and voters of color served by Plaintiff, and Defendants advance no legitimate or compelling government interest to justify this discrimination.

CLAIM III

PARTISAN GERRYMANDERING VIOLATION OF FREE ELECTIONS CLAUSE OF THE NORTH CAROLINA CONSTITUTION

174. Plaintiff relies herein upon all of the paragraphs of this Complaint.

175. The Free Elections Clause in Article I, Section 10 of the North Carolina Constitution provides that “All elections shall be free.”

176. The will of the people plays a fundamental role in North Carolina’s democratic government. *See People ex re. Van Bokkelen v. Canaday*, 73 N.C. 198, 220 (1875) (“Our government is founded on the will of the people. Their will is expressed by the ballot.”). North Carolina’s “is a government of the people, in which the will of the people – the majority – legally expressed, must govern.” *State ex rel. Quinn v. Lattimore*, 120 N.C. 426, 428 (1897) (citing N.C. Const. art. I, § 2). Furthermore, there is a “compelling interest” of the state “in having fair, honest elections.” *State v. Petersilie*, 334 N.C. 169, 184 (1993).

177. Accordingly, the Free Elections Clause requires that elections be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. This is a fundamental right of the citizens enshrined in the North Carolina Declaration of Rights, a compelling governmental interest, and a cornerstone of North Carolina’s democratic form of government. *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56, at *337-38.

178. Partisan gerrymandering is the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power. *Ariz. State Legislature v. Indep.*

Redistricting Comm’n, 135 S. Ct. 2652, 2658 (2015). It operates through vote dilution, i.e., the devaluation of one citizen’s vote as compared to others, because they are likely to vote for the other party.

179. Partisan gerrymandering claims are justiciable under the North Carolina Constitution because such claims fall within the broad, default category of constitutional cases the North Carolina courts are empowered and obliged to decide on the merits, and not within the narrow category of exceptional cases covered by the political question doctrine. Furthermore, partisan gerrymandering does not involve a textually demonstrable constitutional commitment of the issue to a coordinate political department. *Bacon v. Lee*, 353 N.C. 696, 717 (2001). Furthermore, there are satisfactory and manageable criteria and standards for adjudicating partisan gerrymandering claims under the North Carolina Constitution. *Hoke Cty Bd. of Educ. v. State*, 358 N.C. 605, 639 (2004).

180. Extreme partisan gerrymandering that entrenches politicians in power is contrary to the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. “Elections are not free when partisan actors have tainted future elections by specifically and systematically designing the contours of the election districts for partisan purposes and a desire to preserve power.” *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56, at *344 (N.C. Super. Ct. Sept. 3, 2019).

181. SB740, SB739, and HB976 were designed, specifically and systematically, to maintain at least Republican majorities in the state House and Senate and to provide at least a majority of Congressional seats to Republicans. This was achieved by drawing maps in which it was nearly impossible for Democrats to win majorities in either state Legislative chamber or a majority of Congressional seats in any reasonably foreseeable electoral environment.

182. In drawing and enacting SB740, SB739, and HB976, Defendants ensured that it is nearly impossible for the will of the people to be expressed through their votes for State legislators and sought instead to predetermine election outcomes in specific districts and county groupings, as set forth above. Defendants, with the intent to control and predetermine the outcome of state Legislative and Congressional elections for the purpose of retaining partisan power in the General Assembly and to send a majority of Republicans to Congress in North Carolina’s Congressional Delegation, manipulated district boundaries resulting in extreme gerrymandering, subordinating traditional redistricting criteria, so that the resulting maps cracked and packed voters to achieve these partisan objectives.

183. Defendants’ actions do not serve any legitimate government interest, and are not narrowly tailored to achieve a compelling government interest.

184. Accordingly, in drawing and enacting SB740, SB739, and HB976, individually and collectively, Defendants have violated the Free Elections Clause by depriving North Carolina citizens the right to the vote for General Assembly members and Congresspersons in elections that are conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.

185. Defendants’ actions have also harmed Plaintiff, its members and the voters it serves and other voters in North Carolina, by subverting their right, as guaranteed by the Free Elections Clause and provided for in Article I, § 9 of the North Carolina Constitution, to seek a “redress of grievances and for amending and strengthening the law,” as Democratic voters in North Carolina cannot meaningfully seek to redress their grievances or amend the laws consistent with their policy preferences when they cannot obtain a majority of the General Assembly.

CLAIM IV

PARTISAN GERRYMANDERING IN VIOLATION OF ARTICLE I, SECTION 19 OF THE NORTH CAROLINA CONSTITUTION

186. Plaintiff relies herein upon all of the paragraphs of this Complaint.

187. The Equal Protection Clause of the North Carolina Constitution guarantees to all North Carolinians that “[n]o person shall be denied the equal protection of the laws.” N.C. Const., art. I, § 19.

188. The Equal Protection Clause protects the right to “substantially equal voting power.” *Stephenson I*, 355 N.C. at 379. The right to vote on equal terms is a “fundamental right.” *Id.* at 379.

189. Partisan gerrymandering violates the State’s obligation to provide all persons with equal protection of law because, by seeking to diminish the electoral power of supporters of a disfavored party, a partisan gerrymander treats individuals who support candidates of one political party less favorably than individuals who support candidates of another party. *Common Cause v. Lewis*, 2019 N.C. Super. LEXIS 56, at *346; *cf. Lehr v. Robertson*, 463 U.S. 248, 265 (1983) (“The concept of equal justice under law requires the State to govern impartially.”).

190. In drawing and enacting SB740, SB739, and HB976, Defendants intended to deprive citizens of the right to vote on equal terms based on partisan classification in an invidious manner and/or in a way unrelated to any legitimate legislative objective. Defendants intended to hamper, rather than to achieve, fair and effective representation for all citizens in drawing and enacting SB740, SB739, and HB976. Defendants subordinated Democratic voters by devaluing their vote as compared to the votes of Republican voters with at least the partial purpose, and in the alternative the predominant purpose, of entrenching the Republican Party by drawing district lines in individual districts and statewide.

191. Defendants’ actions have the effect of silencing the political voice of voters who support Democratic candidates, including members and voters served by Plaintiff Common Cause, by virtue of district lines that crack or pack those voters, as set forth in the paragraphs above, thereby depriving them of substantially equal voting power in an effort to entrench the Republican party in power, in violation of Article I, Section 19 of the North Carolina Constitution.

192. As a result, voters who prefer Democratic candidates, including the members and voters served by Plaintiff Common Cause, are significantly hindered from meaningfully participating in the decision-making process of government because SB740, SB739, and HB976 were drawn to systematically prevent Democrats from obtaining a majority in either chamber of the General Assembly or sending a majority of Democrats to Congress as part of North Carolina Congressional Delegation.

193. SB740, SB739, and HB976 also deprive Democratic voters in their districts, as alleged above, such that their votes, when compared to the votes of Republican voters, are substantially less likely to ultimately matter in deciding election results. Defendants’ partisan gerrymandering further harms voters, including the Common Cause members and voters who support Democratic candidates, by insulating legislators from popular will and rendering them unresponsive to portions of their constituencies.

194. Defendants’ actions in partisan gerrymandering are not justified by any legitimate state interest or other neutral factor, nor are they narrowly tailored to advance a compelling government interest. Rather, Defendants acted with intent, unrelated to any legitimate legislative objective, to classify voters and deprive citizens of the right to vote on equal terms by subordinating Democratic voters to Defendants’ partisan goals, and this intent was the predominant purpose of drawing the district lines in individual districts and statewide, set forth

above. Defendants’ actions have the effect of depriving disfavored voters in North Carolina of substantially equal voting power and the right to vote on equal terms, as well as substantially equal legislative representation.

CLAIM V

PARTISAN GERRYMANDERING IN VIOLATION OF ARTICLE I, SECTIONS 12, 14 OF THE NORTH CAROLINA CONSTITUTION

195. Plaintiff relies herein upon all of the paragraphs of this Complaint.

196. The Freedom of Speech Clause in Article I, Section 14 of the North Carolina Constitution provides that “[f]reedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained.” The Freedom of Assembly Clause in Article I, Section 12 provides, in relevant part, that “[t]he people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.” In North Carolina, the right of assembly encompasses the right of association. *Feltman v. City of Wilson*, 238 N.C. App. 246, 253 (2014).

197. Voting for the candidate of one's choice and associating with the political party of one's choice are core means of political expression protected by the North Carolina Constitution's Freedom of Speech and Freedom of Assembly Clauses. Voting provides citizens a direct means of expressing support for a candidate and his views. *See Common Cause v. Lewis*, 2019 N.C. Super. LEXIS 56, at *365; *Buckley v. Valeo*, 42 U.S. 1 (1976).

198. The Freedom of Assembly Clause independently protects Common Cause members and voters who support Democratic candidates, and their association with the Democratic Party.

199. By partisan gerrymandering, Defendants identified Republican voters as preferred speakers and targeted Democratic voters, including members and voters served by Plaintiff

Common Cause, as disfavored speakers for disfavored treatment because of disagreement with the views they express when they vote. In doing so, they have rendered disfavored speech less effective, and have intentionally engaged in viewpoint discrimination against Democratic voters, including members and voters served by Plaintiff Common Cause.

200. SB740, SB739, and HB976 also burden the ability of Plaintiff’s members and the voters it serves who are Democratic voters to associate effectively, as guaranteed under Article I, § 12, by precluding them from instructing their representatives, and reducing their ability to apply to the General Assembly for redress of grievances. As a result of the partisan gerrymanders, Democratic voters across the states will be unlikely to obtain redress from the General Assembly on important policy issues because they will unlikely be able to obtain Democratic majorities in the General Assembly. Plaintiff Common Cause likewise cannot instruct representatives or obtain redress on the issues central to its mission due to the gerrymanders.

201. Defendants’ actions do not serve any legitimate government interest, and are not narrowly tailored to achieve a compelling government interest.

202. SB740, SB739, and HB976 also impermissibly retaliate against Plaintiff’s members and the voters it serves who are Democratic voters by (1) taking adverse action against them by diluting their votes and the votes of the Common Cause members and voters who support Democratic candidates, and (2) being created by Defendants with an intent to retaliate against their protected speech or conduct based on their voting history. Furthermore, Defendants would not have taken this adverse action, specifically cracking and packing Democratic voters to dilute their votes, but for that retaliatory intent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

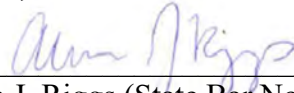
- a. Convene a court of three judges pursuant to N.C.G.S. § 1-267.1;

- b. Declare Plaintiff's and its members and the voters it serves legal right to be free from redistricting that violates the North Carolina Constitution, as set forth in the paragraphs above;
- c. Declare Legislative Defendants' duty to undertake a redistricting process that complies with the requirements of Article II, Sections 3 and 5 of the North Carolina Constitution, as described in *Stephenson v. Bartlett* and as set forth in the paragraphs above;
- d. Declare that the process orchestrated by Legislative Defendants in 2021, including the use of redistricting criteria that prohibited the formal use of racial data in the construction or consideration of state Legislative districts, requirement to utilize the Duke Senate Clusters and Duke House Clusters, and/or failure to ascertain and draw districts required by the VRA prior to all others violate Article II, Sections 3 and 5 of the North Carolina Constitution;
- e. Declare that the process orchestrated by Legislative Defendants in 2021, including the use of redistricting criteria that prohibited the formal use of racial data in the construction or consideration of state Legislative districts, requirement to utilize the Duke Senate Clusters and Duke House Clusters, and/or failure to ascertain and draw districts required by the VRA prior to all others violate Article I, Section 19 of the North Carolina Constitution;
- f. Declare that the harms to Black voters from the intentional destruction of effective crossover districts within SB739 and HB976 resulted from an unconstitutional redistricting process and violate the Equal Protection Clause of the North Carolina Constitution;

- g. Issue a permanent injunction enjoining Defendants from enforcing or giving any effect to the boundaries of districts that harm Black voters by intentionally destroying effective crossover districts within SB739 and HB976, including an injunction barring Defendants from conducting any further elections for the North Carolina General Assembly under these racially discriminatory districts.
- h. Issue a permanent injunction enjoining Defendants from enforcing or giving any effect to the boundaries of districts that reflect partisan gerrymanders in violation of the North Carolina Constitution in SB739, SB740, and HB976.
- i. Issue a permanent injunction enjoining Defendants from creating any future Legislative districts with the purpose or effect of burdening or penalizing an identifiable group, a political party, or individual voters based on their political beliefs, political party membership, registration, affiliations or political activities, or voting histories;
- j. Issue a permanent injunction enjoining Defendants from using “political data” in any future redistricting process to burden or penalize an identifiable group, a political party, or individual voters based on their political beliefs, political-party membership, registration, affiliations or political activities, or voting histories;
- k. Establish new state House, Senate, and federal Congressional districts that comply with the North Carolina Constitution if the North Carolina General Assembly fails to timely enact new plans comporting with the North Carolina Constitution;
- l. Issue any further injunctive relief necessary to delay the state Legislative and Congressional primary elections to allow for fulsome judicial review of the allegations herein and prevent irreparable harm to voters, as alleged herein;

- m. A prompt hearing and/or expedited pleading schedule;
- n. Award Plaintiff reasonable attorneys' fees, if just and proper;
- o. Make all further orders as are just, necessary, and proper; and
- p. Grant Plaintiff such other and further relief as the Court deems just and proper.

Respectfully submitted, this the 13th day of December, 2021.



Allison J. Riggs (State Bar No. 40028)

allison@southerncoalition.org

Hilary H. Klein (State Bar No. 53711)

hilaryhklein@scsj.org

Mitchell Brown (State Bar No. 56122)

Mitchellbrown@scsj.org

Katelin Kaiser (State Bar No. 56799)

Katelin@scsj.org

Jeffrey Loperfido (State Bar No. 52939)

jeffloperfido@scsj.org

SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
Telephone: 919-323-3909
Facsimile: 919-323-3942

J. Tom Boer* (D.C. Bar No. 469585;
CA Bar. No. 199563)

tom.boer@hoganlovells.com

Olivia T. Molodanof* (CA Bar No.
328554)

olivia.molodanof@hoganlovells.com

**Pro Hac Vice* motion filed
contemporaneously with this complaint

HOGAN LOVELLS US LLP
3 Embarcadero Center, Suite 1500
San Francisco, California 94111
Telephone: 415-374-2300
Facsimile: 415-374-2499

Counsel for Plaintiff Common Cause

VERIFICATION

I, Bob Phillips, serve as Executive Director of Common Cause North Carolina, and hereby state that my organization, Common Cause, is the Proposed Plaintiff Intervenor in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to Common Cause, except to those matters stated on information and belief, which I believe to be true.

B. Phillips

Bob Phillips

Sworn and subscribed before me this the 12 day of December, 2021.

Talia Ray
Notary Public

Name: Talia Ray

My commission expires: 11/6/2024



EXHIBIT B

Excerpt of Transcript of December 3, 2021 hearing

Exhibit to Motion to Intervene by Proposed Intervenor Common Cause

IN THE NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

NORTH CAROLINA LEAGUE OF CONSERVATION
VOTERS, INC., et al.,

Plaintiffs,
v.

Wake County
21-CVS-15426

REPRESENTATIVE DESTIN HALL, in his official
capacity as Chair of the House Standing
Committee on Redistricting, et al.

Defendants.

REBECCA HARPER, et al.,

Wake County
21-CVS-500085

Plaintiffs,
v.

REPRESENTATIVE DESTIN HALL, in his official
Capacity as Senior Chair of the House
Standing Committee on Redistricting, et al.

TRANSCRIPT, Volume 1 of 1

Pages 1 - 114

Friday, December 3, 2021

December 3, 2021, Civil Session

The Honorables A. Graham Shirley, Nathaniel J. Poovey,

and Dawn M. Layton, Judges Presiding

Plaintiffs' Motion for Preliminary Injunction

Reported by: Dawn M. Dantschisch, RMR, CRR, CRC
Official Court Reporter
Dawn.M.Dantschisch@nccourts.org

APPEARANCES:

Zachary C. Schauf, Esquire
Jenner & Block, LLP
1099 New York Avenue NW, Suite 900
Washington, D.C. 20001
zschauf@jenner.com

Stephen D. Feldman, Esquire
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, North Carolina 27601
sfeldman@robinsonbradhaw.com

Erik R. Zimmerman, Esquire
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, North Carolina 27517
ezimmerman@robinsonbradshaw.com
On behalf of the Plaintiffs North Carolina League of
Conservation Voters, Inc., et al.

Elisabeth S. Theodore, Esquire
Samuel F. Callahan, Esquire
Arnold Porter Kaye Scholer, LLP
601 Massachusetts Avenue NW
Washington, D.C. 20001
elisabeth.theodore@arnoldporter.com
sam.callahan@arnoldporter.com

Graham W. White, Esquire
Elias Law Group, LLP
10 G Street NE, Suite 600
Washington, D.C. 20002
gwhite@elias.law
On behalf of the Plaintiffs Rebecca Harper, et al.

Phillip J. Strach, Esquire
John E. Branch, III, Esquire
Nelson Mullins Riley & Scarborough, LLP
4140 Parklake Avenue, Suite 200
Raleigh, North Carolina 27612
phillip.strach@nelsonmullins.com
john.branch@nelsonmullins.com

APPEARANCES CONTINUED:

Katherine L. McKnight, Esquire
Mark Braden, Esquire
Baker Hostetler
1050 Connecticut Avenue NW, Suite 1100
Washington, D.C. 200336
kmcknight@bakerlaw.com
mbraden@bakerlaw.com
On behalf of the Legislative Defendants

Terence Steed, Esquire
North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602
tsteed@ncdoj.gov
On behalf of the State Defendants

INDEX

	Page
Argument by Mr. Schauf	7
Argument by Ms. Theodore	31
Response by Mr. Strach	41
Response by Ms. McKnight	67
Argument by Mr. Steed	83
Further Argument by Mr. Schauf	85
Further Argument by Ms. Theodore	99
Further Response by Mr. Strach	110
Further Response by Ms. McKnight	110
Court's Ruling	112
Certification of Transcript	114

1 account. It didn't bar legislators from using their local
2 knowledge about the local areas and the local communities,
3 and not just in a partisan way, but in any way.

4 In lots of areas of the state, there's communities that
11:23AM 5 have typically been grouped together in redistricting, and
6 the local people know that, and they know where the
7 communities are. They know the neighborhoods, and they know
8 where the churches are, and they've got all that local
9 knowledge. That was allowed to be used, and I'm sure it was
11:23AM 10 used, but that wasn't a solely partisan thing.

11 And so, yeah, the local -- the local legislators sit
12 down at the computer and mess around with it and draw
13 something.

14 JUDGE SHIRLEY: So, what were the -- what was the
11:23AM 15 criteria given to the legislators that they were required to
16 use?

17 MR. STRACH: So, those are in the record,
18 Your Honor. They were passed in August. And so, they said
19 no election data. And as to the legislative maps, they had
11:23AM 20 to follow the Stephenson requirements. They had a threshold
21 for compactness.

22 JUDGE SHIRLEY: When you say "follow the
23 Stephenson requirement," you mean creating the VRA districts
24 first and then --

11:24AM 25 MR. STRACH: That would be following the whole

1 county construction rules that Stephenson laid out.

2 JUDGE SHIRLEY: And the first rule is you create
3 your VRA districts first?

4 MR. STRACH: That's -- whether that's a rule or
11:24AM 5 not, I would argue that recognizes the supremacy of federal
6 law.

7 JUDGE SHIRLEY: Well, that's what Chief Justice
8 Lake said, here's the way you're to do it.

9 MR. STRACH: Right. He laid out a series of
11:24AM 10 construction rules for constructing districts. It wasn't
11 necessarily a process, it was basically construction.
12 Because that's what you do with districts, you literally
13 build them VTD by VTD. And that's what -- the court kind of
14 provided a roadmap for how you do that. So, they had to do
11:24AM 15 that.

16 They also had a criteria that strove to keep
17 municipalities whole. If you look at the congressional map
18 in this case, out of 500-and-some municipalities, only two
19 are split. That is remarkable. I can guarantee you that's
11:24AM 20 never been done in the history of North Carolina
21 redistricting. And, Your Honor, the criteria that we're
22 talking about in August is Exhibit 8 to our brief, and
23 they're all laid out there.

24 So, there was an attempt to keep municipalities whole,
11:25AM 25 there was a threshold, sort of a floor, for compactness, and

1 they were allowed to consider incumbency and where members
2 lived. And then they were allowed to use local knowledge.
3 But even that, Your Honor, was subordinate to all the other
4 criteria, because it said so long as a plan complied with
11:25AM 5 all the other criteria, you could use local knowledge of the
6 community.

7 JUDGE SHIRLEY: Going back to Stephenson, I mean,
8 it was a mandate, wasn't it, that VRA districts be
9 required -- created first?

11:25AM 10 MR. STRACH: To the extent, Your Honor, you could
11 read Stephenson to require VRA districts in priority in
12 terms of chronologically, like literally drawing them first,
13 I don't think that's necessarily what Stephenson says.

14 JUDGE SHIRLEY: Well, it says, "On remand, to
11:26AM 15 ensure full compliance with federal law, legislative
16 districts required by the VRA shall be formed prior to
17 creation of non-VRA districts." So, that's temporal. If
18 there are VRA districts that are required to be created,
19 you've got to create those before you do the non-VRA.

11:26AM 20 MR. STRACH: Your Honor, that's a reasonable
21 interpretation. I think it could be interpreted otherwise.
22 In fact, the Covington court didn't know how to interpret
23 it, and they dropped a footnote saying they expressed no
24 opinion about that.

11:26AM 25 I would note, though, it also says that you -- to the

1 extent it is temporal and chronological, it's only -- you
2 only have to do it for the districts that are required by
3 the VRA.

4 JUDGE SHIRLEY: Right.

11:26AM

5 MR. STRACH: And so, obviously, the legislature
6 didn't believe there were any required by the VRA.

7 JUDGE SHIRLEY: Wouldn't you have to look at
8 racial data before you come to that conclusion?

11:26AM

9 MR. STRACH: No, Your Honor, I don't believe you
10 would. And I appreciate the opportunity to address this
11 again. When you look at the racial issue, which I
12 understand are not really at issue in this case --

13 JUDGE SHIRLEY: I understand that.

11:27AM

14 MR. STRACH: -- but it is helpful to understand
15 that, you know, we've briefed the litigation that occurred
16 over the last decade, and there's a tension between the
17 Voting Rights Act and the Equal Protection Clause.

18 JUDGE SHIRLEY: Absolutely.

11:27AM

19 MR. STRACH: And some would say it's more than a
20 tension, it's an outright conflict. And so, if you look at
21 racial data, there's a significant chance that just looking
22 at it -- it's kind of like a discrimination case. Somebody
23 applies for a job, and they tell you, I've got bipolar
24 disorder, then they don't get hired. What are they going to
25 say? Well, I didn't get hired because I told you I had

11:27AM

1 bipolar disorder.

2 If you look at the racial data, then you're
3 automatically accused of violating the Equal Protection
4 Clause. You looked at it, you --

11:27AM

5 JUDGE SHIRLEY: It has to be a predominant
6 factor.

7 MR. STRACH: It has to be a predominant factor.
8 But that's a mushy standard. It's very easy to be accused
9 of that. So, you don't want to look at it unless you really
10 think you have to. And what we learned in the last decade
11 was the courts repeatedly told us, no, you don't need it,
12 because there's not legally significant racially polarized
13 voting.

11:28AM

14 JUDGE SHIRLEY: That was in certain districts.
15 That was in districts where there was alleged to be packing,
16 and they said no, no need to pack, that's using racial data,
17 and because there's no racially polarized voting, you don't
18 meet the third prong of the Gingles test.

11:28AM

19 MR. STRACH: Right.

11:28AM

20 JUDGE SHIRLEY: So that district is not a VRA
21 district.

22 MR. STRACH: Right.

23 JUDGE SHIRLEY: It didn't say there were no VRA
24 districts in the state, it just said that particular
25 district is not a VRA.

11:28AM

1 MR. STRACH: Well, they said that, though,
2 Your Honor, all over the state. They were at least 28 at
3 issue in the Covington case. And then in the Harper and
4 Common Cause litigation, the court did an analysis that
11:28AM 5 looked at districts all over the state. Not 100 percent of
6 the state, to be fair, but all over the state.

7 So, the message was pretty loud and clear. The Gingles
8 factors are not going to be satisfied pretty much anywhere
9 in the state. And so, then we got to this redistricting
11:29AM 10 with the 2020 data, and we had plaintiffs' lawyers, not
11 these plaintiffs' lawyers, other plaintiffs' lawyers,
12 sending us letters where they were admitting, hey,
13 African-Americans are being elected in districts under 50
14 percent.

11:29AM 15 Well, that on its face shows us that the Gingles
16 preconditions are going to be met. So, why would we look at
17 race and run the risk of an equal protection challenge when
18 everything we're being told all along is, hey, you don't
19 need to look at race?

11:29AM 20 JUDGE SHIRLEY: I'm sorry I got us off track with
21 the VRA.

22 MR. STRACH: Thank you. I appreciate you asking
23 that, Your Honor, because I actually -- I didn't think I
24 gave a good enough explanation the other day. So, I
11:29AM 25 appreciate the opportunity to do it today.

CERTIFICATION OF TRANSCRIPT

This is to certify that the foregoing transcript of proceedings taken the December 3, 2021, Session of Wake County Superior Court is a true and accurate transcript of the proceedings as reported by me and transcribed by me or under my supervision. I further certify that I am not related to any party or attorney, nor do I have any interest whatsoever in the outcome of this action.

This, the 4th day of December, 2021.



Dawn M. Dantschisch, RMR, CRR, CRC
Official Court Reporter
Tenth Judicial District
(919) 792-5202
Dawn.M.Dantschisch@nccourts.org

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 015426

NORTH CAROLINA LEAGUE, OF
CONSERVATION VOTERS, INC., *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL,
in his official capacity as Chair of the
House Standing Committee on
Redistricting, *et al.*,

Defendants.

FILED
2021 DEC 13 PM 2:34
WAKE CO., C.S.C.
RY

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 500085

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL,
in his official capacity as Chair of the
House Standing Committee on
Redistricting, *et al.*,

Defendants.

CASE SCHEDULING ORDER

THESE MATTERS came on to be heard before the undersigned three-judge panel on the Court's own motion for entry of a scheduling order for the purpose of efficient management of these matters.

NCLCV Plaintiffs (Civil Action No. 21 CVS 015426) filed their Complaint contemporaneously with a Motion for Preliminary Injunction pursuant to Rules 7(b) and 65 of the North Carolina Rules of Civil Procedure on November 16, 2021. NCLCV Plaintiffs challenge both state legislative and congressional districts recently enacted by the General Assembly on partisan gerrymandering, racial gerrymandering, and whole-county provision grounds. Harper Plaintiffs (Civil Action No. 21 CVS 500085) filed their Complaint on November 18, 2021, and a Motion for Preliminary Injunction pursuant to Rule 65 and N.C.G.S. § 1-485 on November 30, 2021. Harper Plaintiffs challenge only the recently-enacted congressional districts and only on partisan gerrymandering grounds.

On November 19, 2021, and November 22, 2021, the NCLCV and Harper actions, respectively, were assigned to the undersigned three-judge panel of Superior Court, Wake County, pursuant to N.C.G.S. § 1-267.1. On December 3, 2021, the undersigned consolidated these respective cases pursuant to Rule 42 of the North Carolina Rules of Civil Procedure and heard NCLCV and Harper Plaintiffs' [hereinafter collectively referred to as "Plaintiffs"] Motions for Preliminary Injunction. On December 3, 2021, after considering the extensive briefing and oral arguments on the motions, the undersigned denied Plaintiffs' Motions for Preliminary Injunction.

On December 3, 2021, Plaintiffs filed a notice of appeal with the North Carolina Court of Appeals. After initially partially granting a temporary stay of the candidate filing period for the 2022 elections, the North Carolina Court of Appeals denied Plaintiffs’ temporary stay on December 6, 2021.

On December 8, 2021, on Plaintiffs’ Petitions for Discretionary Review Prior to Determination by the Court of Appeals, Motion to Suspend Appellate Rules to Expedite a Decision, and Motion to Suspend Appellate Rules and Expedite Schedule, the Supreme Court of North Carolina granted a preliminary injunction and temporarily stayed the candidate filing period “until such time as a final judgment on the merits of plaintiffs’ claims, including any appeals, is entered and remedy, if any is required, has been ordered.” SCONC order on Pls motion p. 3. The Order further directed this Court to hold proceedings on the merits of Plaintiffs’ claims and provide a written ruling on or before January 11, 2022.

As an initial matter, this Court notes that in a previous redistricting case, *Common Cause v. Lewis*, No. 18-CVS-014001 (N.C. Super. Ct.), heard by a three-judge panel in 2019 in which only state legislative districts were challenged solely under partisan gerrymandering grounds in one civil action, the discovery period lasted approximately five-and-a-half months, the trial itself lasted two weeks, and the 357-page Final Judgment was entered nearly four weeks after the submission of proposed findings of fact and conclusions of law. The amount of discovery, length of trial, and comprehensive nature of the Final Judgment was due largely in part to the requirements of N.C.G.S. § 120-2.3, which requires that every order or judgment

declaring as unconstitutional an act of the General Assembly that apportions or redistricts State legislative or congressional districts specify all facts supporting that declaration, state separately and with specificity the court's conclusions of law on the declaration, and identify every defect found by the court both as to the plan as a whole and as to individual districts. Furthermore, the remedial phase in that case lasted close to two months in large part because the General Assembly must be afforded the first opportunity to enact new redistricting plans when those plans are found to be invalid, see N.C.G.S. § 120-2.4 and *Stephenson v. Bartlett*, 355 N.C. 354, 385, 562 S.E.2d 377, 398 (2002), and the trial court was again tasked with reviewing those remedial districts.

In light of our Supreme Court's Order in this case and the history of redistricting litigation in our state courts described above, this Court requested that the parties report to the Court on December 10, 2021, with proposed scheduling order dates and deadlines necessary to comport with the January 11, 2022, deadline for this Court to enter a written ruling.

Based upon the limited timeframe for the parties to develop the evidence that will then be received by the Court, the similarly limited timeframe in which this Court must then review that evidence to make findings of fact and conclusions of law so as to enter a Final Judgment resolving the merits of all claims asserted by the collective Plaintiffs in these consolidated cases, and after considering the submissions of the parties, the Court hereby **ORDERS** the following:

1. The parties shall adhere to the following schedule:

Date	Action
12/15/2021	Deadline to file amended complaints
12/17/2021	Deadline to file responsive pleadings
12/23/2021	Deadline for parties' exchange of evidence (in the form of expert witness reports, fact witness affidavits, and exhibit lists)
12/27/2021	Deadline for parties' exchange of witness lists.
12/28/2021	Deadline for parties' exchange of rebuttal evidence, including rebuttal expert reports.
12/28/2021	Deadline for parties to notify the court of the number of attorneys that will be appearing on behalf of each party and the number of individual plaintiffs and individual defendants who plan to attend.
12/31/2021 ¹	Deadline to conduct any expert discovery depositions. Expert discovery depositions may be by video, limited to 4 hours per expert.
	Deadline to conduct depositions of fact witnesses.
12/31/2021	Deadline for submission to the Court of proposed findings of fact and conclusions of law (in lieu of pre-trial briefs).
	Deadline for submission of initial stipulation of facts.
12/31/2021	Deadline for submission to the Court of final exhibit lists, witness lists, and pre-marked exhibits for trial (deposition transcripts may be submitted to the court on 1/3/2022).
1/3/2022-1/5/2022	Trial
1/6/2022	Closing Arguments

2. All submissions to the court must be made by 5:00 PM EST on any date specified in this Order.

3. Electronic copies of all documents filed with the Clerk of Court, all Expert Witness Reports upon time of service on an opposing party, and all other

¹ Pursuant to the North Carolina Judicial Branch Holiday Schedule, courthouse offices, including the Clerk of Superior Court, will be closed on December 31, 2021, so filing will not be available.

documents required by this Order to be submitted to the Court by the deadlines contained herein, shall be promptly transmitted by email to:

- (a) 10th Judicial District Trial Court Administrator Kellie Myers
(Kellie.Z.Myers@nccourts.org), and
- (b) N.C. Judicial Fellow Alison Rossi
(Alison.J.Rossi@nccourts.org).

All counsel shall be cc'd on any email correspondence required by this Order. Counsel should be familiar with *19 Formal Ethics Opinion 4* issued by the N.C. State Bar in July 2021, entitled *Communications with Judicial Officials*, and communications required by this Order should comport therewith.

4. Expert reports produced to an opposing party shall be accompanied by all source code, source data, input parameters, and all outputted data.

5. De bene esse depositions may only be taken with leave of the Court.

6. Trial will commence at 9:00 AM on January 3, 2022, and the presentation of evidence will conclude by 5:00 PM on January 5, 2022. There will be no opening statements. The collective Plaintiffs and collective Defendants in these consolidated cases will each be given nine (9) hours in which to present their direct evidence and conduct any cross examination. Closing arguments will commence at 9:00 AM on January 6, 2022. The collective Plaintiffs and collective Defendants in these consolidated cases will each be given one (1) hour of closing argument. The parties are charged with keeping track of their time.

7. The trial will take place at Campbell University School of Law (225 Hillsborough Street, Raleigh, NC 27603). Any logistical or other questions the parties may have shall be directed solely to TCA Kellie Myers and Judicial Fellow Alison

Rossi for handling. Under no circumstances are the parties to contact Campbell University School of Law personnel with these questions. TCA Kellie Myers will provide trial information and courtroom logistics to the parties, attorneys, and press on December 28, 2021.

8. Objections to any of the exchanged evidence may be raised and will be heard at trial.

9. The North Carolina Rules of Civil Procedure, General Rules of Practice for the Superior and District Courts, and Local Rules of Civil Superior Court for Wake County shall govern all matters not expressly covered or superseded by this Order. The parties are reminded that if a party intends to submit any materials under seal, they are to comply with Rule 27 of the General Rules of Practice.

10. The Court may amend or supplement this Order as deemed appropriate by the Court upon its own motion or that of any party. While this Court would be willing to grant additional time for the parties to conduct discovery and present evidence, it is not within this Court's power to do so while still complying with our Supreme Court's directive to reach a full resolution on the merits of all claims in these consolidated cases. Further, although the timeline contained herein is compressed, it is similar to that of the timeline set out in N.C.G.S. § 1-521 for trial to determine the rightful holder of an office. Indeed, resolving all claims presented in these actions will require resolution of the partisan gerrymandering claims that were the subject of Plaintiffs' respective Motions for Preliminary Injunction as well as the NCLCV Plaintiffs' claims of racial gerrymandering and violations of the Whole County

Provisions in the North Carolina Constitution. To the extent they deem it necessary and feasible, the parties are at liberty to request additional time from the Supreme Court of North Carolina.

This the 13th day of December, 2021.


A. Graham Shirley, Superior Court Judge

/s/ Nathaniel J. Poovey

Nathaniel J. Poovey, Superior Court Judge

/s/ Dawn M. Layton

Dawn M. Layton, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission addressed as follows:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Harper Plaintiffs

Stephen D. Feldman
Adam K. Doerr
Erik R. Zimmerman
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
adoerr@robinsonbradshaw.com
ezimmerman@robinsonbradshaw.com
Counsel for NCLCV Plaintiffs

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
NELSON MULLINS RILEY &
SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Phillip.strach@nelsonmullins.com
Tom.farr@nelsonmullins.com
Alyssa.riggins@nelsonmullins.com
Counsel for Legislative Defendants

Terence Steed
Amar Majmundar
Stephanie A. Brennan
NORTH CAROLINA DEPARTMENT
OF JUSTICE
Post Office Box 629
Raleigh, NC 27602
tsteed@ncdoj.gov
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
Counsel for State Board Defendants

Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 13th day of December 2021.



Kellie Z. Myers
Trial Court Administrator
10th Judicial District
Kellie.z.myers@nccourts.org

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

REBECCA HARPER, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426

FILED
2021 DEC 14 P 4:23
WAKE COUNTY N.C.S.C.
BY _____
Consolidated with
21 CVS 509085

LEGISLATIVE DEFENDANTS' MOTION TO COMPEL

Legislative Defendants respectfully move the Court to compel both sets of Plaintiffs (respectively, the *Harper* Plaintiffs and *NCLCV* Plaintiffs) to produce all source code, source data, input parameters, and all outputted data pertaining to the expert reports produced to Legislative Defendants during the preliminary-injunction phase of this case. Plaintiffs used their expert reports to obtain an injunction and order changing election dates for every voter in every election across North Carolina. But Plaintiffs have yet to disclose any information supporting those reports, and they remain a black box of secrecy. Further, the *Harper* Plaintiffs have wrongly attempted to condition disclosure of this vital information on an onerous protective order that would inhibit Legislative Defendants' ability to analyze, on this highly expedited time-table, the source code that implements the mathematical models employed by Plaintiffs' experts and that would leave the public without any access to this information.

Plaintiffs’ continued demand for secrecy stands in stark and dissonant contrast to the public scrutiny to which the General Assembly subjected its redistricting work. And it violates this Court’s scheduling order, which requires “[e]xpert reports produced to any opposing party [to] be accompanied by all source code, source data, input parameters, and all outputted data.” 12/13/21 Order ¶ 4. Plaintiffs’ failure to disclose this information also infringes—with no justification at all—the public’s First Amendment right of access to information supporting court rulings and analogous provisions of North Carolina constitutional, statutory, and common law.

Plaintiffs’ continued obstinacy is highly prejudicial to Legislative Defendants, who have yet to see any of the material used as evidence against the 2021 Plans and who are unable to prepare opposing expert reports on this highly expedited time frame. Legislative Defendants have made every effort to negotiate with Plaintiffs’ counsel to obtain this information, and Legislative Defendants also have produced information to Plaintiffs to assist them in preparing their expert reports. Plaintiffs’ continued obstinacy in the face of their clear legal obligations will, if ratified, prejudice Legislative Defendants’ ability to put on a fair and effective case. Plaintiffs’ intransigence and delay is clearly improper and Legislative Defendants respectfully ask the Court to order immediate production and disclosure of all materials Plaintiffs used to change the voting opportunities of all North Carolina citizens.

BACKGROUND

1. Plaintiffs contend that “[t]his suit is about harnessing the power of mathematics and computer science to identify and remedy the severe constitutional flaws in the redistricting maps recently enacted by the North Carolina General Assembly.” *NCLCV* Compl. ¶ 1; *see also Harper* Compl. ¶ 105. Both sets of Plaintiffs filed verified complaints reciting the alleged output of those mathematical and computer-science processes and preliminary-injunction motions accompanied

by expert reports purporting to establish that the 2021 Plans are unconstitutionally partisan. The *Harper* Plaintiffs relied on expert reports purporting to identify the results of simulated mapping exercises, by which thousands—even millions—of alternative plans were produced by a computer algorithm and compared with the 2021 Plans. The *NCLCV* Plaintiffs relied only on three maps (one for each legislative body and the congressional delegation) and alleged that the maps had been “optimized” based on undisclosed criteria using a high-performance computing platform and a mysterious, alleged advanced algorithm. Neither set of Plaintiffs produced any supporting data or source code with their reports; they asked the courts to accept their assertions on faith.

2. These expert materials serve a unique significance in the context of this unique case. Both sets of Plaintiffs allege that the 2021 Plans are unconstitutionally partisan. But this type of claim has vexed the courts for generations as jurists have sought “some limited and precise rationale . . . to correct an established violation of the Constitution in some redistricting cases.” *Vieth v. Jubelirer*, 541 U.S. 267, 306 (2004) (Kennedy, J., concurring). In 2019, the U.S. Supreme Court called off that hunt, concluding that there are no judicially manageable standards for distinguishing an unconstitutionally political plan from a constitutional plan. *See Rucho v. Common Cause*, 139 S. Ct. 2484 (2019). But the dissent argued that standards could be identified that “do not require—indeed, they do not permit—courts to rely on their own ideas of electoral fairness, whether proportional representation or any other. And they limit courts to correcting only egregious gerrymanders, so judges do not become omnipresent players in the political process.” *Id.* at 2509 (Kagan, J., dissenting). In purporting to “harness[] the power of mathematics and computer science to identify and remedy the severe constitutional flaws in the redistricting maps recently enacted by the North Carolina General Assembly,” *NCLCV* Compl. ¶ 1, Plaintiffs here are attempting to provide a judicially manageable standard of constitutional law by which

redistricting laws are to be judged and by which the voting rights of every North Carolina resident will be administered.

3. Because Plaintiffs have purported to make such a significant discovery, one would have thought they would be eager to share the details of their “mathematics and computer science” with the world. *Id.* Instead, Plaintiffs have treated all their source code, source data, input parameters, and outputted data as akin to the recipe for Coca-Cola and made every effort to hide it under lock and key. As noted, they did not disclose any supporting material with their preliminary-injunction papers. Nevertheless, the State Supreme Court issued an injunction based on Plaintiffs’ presentation, concluding that “the great public interest in the subject matter of these cases” and their “importance . . . to the constitutional jurisprudence of this State” justified the “preliminary injunction” Plaintiffs requested, as well as a temporary stay of the candidate-filing period and primaries. 12/8/21 Supreme Court Order 3.

4. On expedited remand, as part of discussions concerning a proposed scheduling order, Counsel for Legislative Defendants made a formal request for “copies of the source code, source data, input parameters . . . , and all data outputted from those simulations . . . for the analyses that formed the basis” of Plaintiffs’ expert reports at the preliminary-injunction stage. Exhibit 1. Counsel for the *Harper* Plaintiffs responded by agreeing to produce that information “on two conditions”: (1) that the parties agree to a protective order keeping the information sealed, and (2) that Legislative Defendants produce incumbent addresses. Exhibit 2. Counsel for Legislative Defendants responded by arranging for the collection of incumbent addresses, but Legislative Defendants asserted that a protective order would be improper and proposed an interim production of material under a conditional protective order pending the Court’s resolution of the issue. Exhibit 3. Counsel for the *Harper* Plaintiffs responded in protest to any disclosure in the

absence of a protective order maintaining the basis of their case under seal, observing that Legislative Defendants had agreed to a protective order in the *Common Cause* litigation. Exhibit 4. The *Harper* Plaintiffs also reiterated their demand for incumbent addresses. *Id.* Meanwhile, the *NCLCV* Plaintiffs responded that they “do not agree to produce the materials . . . described” in Legislative Defendants’ request “and reserve all rights.” Exhibit 5.

5. On the morning of Tuesday, December 14, Legislative Defendants produced the incumbent addresses, which had taken several days to collect,¹ and reiterated their request for the materials supporting the preliminary-injunction stage expert reports. Exhibit 6. The *Harper* Plaintiffs, however, reiterated their refusal to produce the material requested by Legislative Defendants without a protective order. Exhibit 7. The *NCLCV* Plaintiffs reiterated their opposition to any production of preliminary-injunction stage materials at all. Exhibit 8.

6. Legislative Defendants now move to compel production of all source code, source data, input parameters, and all outputted data pertaining to the expert reports produced on Legislative Defendants during the preliminary-injunction phase of this case.

ARGUMENT

The Court should require Plaintiffs to fulfill their obligations to the Court and to the public and produce the materials by which they obtained an injunction impacting the voting rights and opportunities of every North Carolina voter. The materials Legislative Defendants request are covered by the plain text of this Court’s scheduling order and must independently be disclosed under various rights of access the public has to materials forming the basis of judicial decisions, including under the First Amendment. Legislative Defendants are suffering prejudice every

¹ Some members list a PO Box in public and official address lists, which does not serve redistricting purposes. It therefore took several days for the General Assembly’s non-partisan staff to compile the requested list, which Legislative Defendants accomplished as quickly as possible.

moment Plaintiffs fail to fulfill their obligations, as their experts need these materials to prepare an appropriate defense in this case of exceptional magnitude on short time.

A. Production Is Required Under the Scheduling Order

Plaintiffs’ production obligations flow from the plain text of the Court’s December 13 scheduling order, which provides that “[e]xpert reports produced to an opposing party shall be accompanied by all source code, source data, input parameters, and all outputted data.” 12/13/21 Order ¶ 4. The materials supporting Plaintiffs’ preliminary-injunction motions are clearly “[e]xpert reports,” and they were clearly “produced to an opposing party,” as they were served on Legislative Defendants in conjunction with Plaintiffs’ preliminary-injunction motions. As a result, the clear text of the order requires that the “be accompanied by all source code, source data, input parameters, and all outputted data.” Thus, Plaintiffs’ obligations are clear: they must produce all materials forming the basis of their expert reports immediately.

Both sets of Plaintiffs have suggested that the disclosure obligation of paragraph 4 applies only to expert reports produced on December 23, which is the scheduling order’s deadline “for parties’ exchange of evidence (in the form of expert witness reports [etc.]).” 12/13/21 Order ¶ 1. But that is not what the scheduling order provides. It plainly applies to “[e]xpert reports produced to an opposing party,” *id.* ¶ 4, and, as shown, the preliminary-injunction stage reports qualify under that definition. There is no limitation under paragraph 4 restricting the disclosure requirement to expert reports produced under paragraph 1. Court orders are interpreted according to “the plain meaning of the language used.” *See, e.g., Butler v. Butler*, 239 N.C. App. 1, 9, 768 S.E.2d 332, 337 (2015); *Saunders v. Crystal Springs Park, Inc.*, 269 N.C. App. 678, 837 S.E.2d 480 (2020) (unreported table decision); *Bradshaw v. Maiden*, No. 14 CVS 14445, 2018 WL 2140354, at *6 (N.C. Super. May 9, 2018). The plain language here refutes Plaintiffs’ assertion that subparagraph 4 does not reach the preliminary-injunction stage reports.

It would also be inequitable and untenable to allow Plaintiffs to refuse to produce the materials forming the basis of reports filed with this Court and which formed the basis of relief in the North Carolina Supreme Court. Legislative Defendants negotiated with Plaintiffs and offered to produce materials (the incumbent addresses), and, in return, both sets of Plaintiffs have frustrated Legislative Defendants in their reasonable request of production of information vital to the defense of this case. Even if Plaintiffs chose to rely on totally new expert materials, the preliminary-injunction materials would be relevant to probe the reasons for such an abrupt change and call into question Plaintiffs’ experts’ methods and credibility. The material must be disclosed.

B. Disclosure of Expert Materials Is Required as Matter of Public Access

Disclosure is independently required—and a protective order forbidden—under several doctrines mandating that materials forming the basis of court decisions be made public, particularly in cases of exceptional public importance. If this case is sufficiently important, and Plaintiffs’ claims sufficiently compelling, to justify an incredibly expedited proceeding and an injunction modifying North Carolina’s entire election apparatus, then it is sufficiently important to required disclosure of the materials at the heart of this case—and which are proffered as the constitutional law of North Carolina.

Several related doctrines of state and federal law prohibit Plaintiffs from maintaining their expert’s source code as a secret sauce in the context of this case of overriding public importance. First, “the public and the press have a First Amendment right of access to civil trials,” *In re Avandia Mktg., Sales Pracs. & Prod. Liab. Litig.*, 924 F.3d 662, 673 (3d Cir. 2019), as well as “to documents filed in” in a civil case, *Rushford v. New Yorker Mag., Inc.*, 846 F.2d 249, 253 (4th Cir.

1988).² Second, Article I, Section 18 of the North Carolina Constitution “guarantees a qualified constitutional right on the part of the public to attend civil court proceedings” and to obtain “records or documents” associated with those proceedings. *Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 476–77, 515 S.E.2d 675, 693 (1999) (emphasis omitted). Third, the North Carolina Public Records Act requires that “court records . . . ‘shall be open to the inspection of the public’” *LexisNexis Risk Data Mgmt. Inc. v. N. Carolina Admin. Off. of Cts.*, 368 N.C. 180, 185, 775 S.E.2d 651, 654–55 (2015) (quoting N.C.G.S. § 7A–109(a)). Fourth, North Carolina common law also recognizes a right of public access. *Virmani*, 350 N.C. at 473, 515 S.E.2d at 691.

Although there are differences among these doctrines on the margins, they all involve a similar framework. The first question, generally, is whether the right of access or disclosure applies. *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 8 (1986) (First Amendment); *Virmani*, 350 N.C. at 476, 515 S.E.2d at 693 (Article I, Section 18 of N.C. Constitution); *LexisNexis Risk Data Mgmt.*, 368 N.C. at 186, 775 S.E.2d at 655 (N.C. Public Records Act); *In re Investigation into Death of Cooper*, 200 N.C. App. 180, 188, 683 S.E.2d 418, 425 (common law); N.C.G.S. § 1A-1, Rule 26. If so, the question becomes whether the party seeking to maintain secrecy can establish an appropriate interest in secrecy and narrow tailoring. *See, e.g., Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606–07 (1982) (First Amendment); *Virmani*, 350 N.C. at 476, 515 S.E.2d at 693 (Article I, Section 18 of N.C. Constitution). Under the First Amendment, that standard is strict scrutiny and demands a compelling state interest and narrow tailoring. *Globe*

² Although “the Supreme Court has not addressed whether the First Amendment’s right of access extends to civil trials or other aspects of civil cases,” “most circuit courts, including the Fourth Circuit, have recognized that the First Amendment right of access extends to civil trials and some civil filings.” *Am. C.L. Union v. Holder*, 673 F.3d 245, 252 (4th Cir. 2011). The North Carolina Supreme Court has “assume[d]” this to be correct. *Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 471, 515 S.E.2d 675, 690 (1999).

Newspaper, 457 U.S. at 606; *Baltimore Sun Co. v. Goetz*, 886 F.2d 60, 64 (4th Cir. 1989). Under this framework, disclosure without a protective order is required.

1. There can be no serious question that the right of access triggering heightened scrutiny applies to the requested materials. The First Amendment right of access reaches “those materials which properly come before the court in the course of an adjudicatory proceeding and which are relevant to that adjudication.” *In re Providence Journal Co.*, 293 F.3d 1, 9 (1st Cir. 2002). It therefore applies to materials that “are made part of a dispositive motion” or other request “by a party seeking action by a court,” *Rushford v. New Yorker Mag., Inc.*, 846 F.2d 249, 252 (4th Cir. 1988), because such materials “play a role in the adjudicative process,” *In re U.S. for an Ord. Pursuant to 18 U.S.C. Section 2703(D)*, 707 F.3d 283, 291 (4th Cir. 2013) (citation omitted). The rule under North Carolina constitutional, statutory, and common law is similar. *See Virmani*, 350 N.C. at 469, 515 S.E.2d at 689 (construing North Carolina’s disclosure regimes to reach “judicial records and documents”). Here, the source code, source data, input parameters, and all outputted data pertaining to the expert reports produced at the preliminary-injunction stage meet this standard in two different respects.³

First, Plaintiffs’ expert materials were critical to the preliminary-injunction stage litigation, which qualifies as part of the adjudicative process to which the First Amendment and other rights of access apply. *See Bayer Cropscience Inc v. Syngenta Crop Protection LLC*, 979 F. Supp. 2d 653, 656 (M.D.N.C. 2013) (“The Court concludes that the briefing and exhibits filed in connection with motions seeking injunctive relief are subject to the public’s First Amendment right of access.”); *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1103 (9th Cir. 2016) (“Due

³ The North Carolina statutory and common law rights of access apply to a broader swath of “public records,” *Virmani*, 350 N.C. at 462-63, 473, 515 S.E.2d at 685, 691. For that reason, if the First Amendment right of access attaches, so does the common law right.

to the strong presumption for public access and the nature of the instant motion for a preliminary injunction, Chrysler must demonstrate compelling reasons to keep the documents under seal.”); *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059 (3rd Cir. 1984) (finding a First Amendment right of access to preliminary injunction proceedings). Although the source code, source data, input parameters, and all outputted data were not filed with the Court, the materials that *were* filed with the Court were derived from these “mathematics and computer science” tools and materials, *NCLCV* Compl. ¶ 1, and cannot be separated from them. The materials that were disclosed were created from the undisclosed materials. Under the rule of completeness, where Plaintiffs relied on portions of these materials that they chose to make part of the public record, Legislative Defendants have the right to compel admission and disclosure of the portions Plaintiffs relied upon and yet kept hidden. *See State v. Hensley*, 254 N.C. App. 173, 177–78, 802 S.E.2d 744, 748 (2017) (discussing the rule of completeness). Any other rule would permit litigants to avoid First Amendment scrutiny by selective disclosure of materials. Because the materials that *were* publicly filed are inextricably intertwined with the materials Plaintiffs seek to maintain in secrecy, the right of access applies.

Second, Plaintiffs’ expert materials are certain to be used at the forthcoming trial on the merits in this matter. Even if Plaintiffs were to utilize different expert reports and materials—which seems unlikely—Legislative Defendants would seek admission of the prior reports and underlying materials, including to probe the reason for any abrupt abandonment of the preliminary-injunction stage materials. Plainly, trial exhibits filed with the Court are subject to all applicable rights of access, including under the First Amendment. *Syngenta Crop Prot., LLC v. Willowood, LLC*, No. 1:15-cv-274, 2017 WL 6001818, at *2 (M.D.N.C. Dec. 4, 2017) (“Because the public has a right to attend trials and oversee the courts, the First Amendment protects the public’s right

to access the trial testimony and exhibits.” (citing *In re U.S. for an Order Pursuant to 18 U.S.C. Section 2703(D)*, 707 F.3d at 290–91)). This is an independently sufficient basis to compel disclosure, without a protective order.

2. The continued secrecy of the source code, source data, input parameters, and all outputted data pertaining to the expert reports produced at the preliminary-injunction stage cannot satisfy strict scrutiny applicable under the First Amendment or any lower standard of scrutiny. No interest can outweigh the interest in production and public disclosure under the facts here. Strict scrutiny involves a weighing of interest under the unique facts of each case. *See United States v. Doe*, 962 F.3d 139, 146–47 (4th Cir. 2020). Thus, Plaintiffs must propound an interest “sufficiently compelling to justify closure under the First Amendment” when compared against the public’s interest in the context of the case at bar. *See Doe v. Pub. Citizen*, 749 F.3d 246, 269 (4th Cir. 2014); *see also Nixon v. Warner Comms, Inc.*, 435 U.S. 589, 599 (under common law court must exercise its discretion in light of relevant facts and circumstances of case.). “Once a discovery document becomes part of a judicial record, there is a strong presumptive right of public access; to overcome that strong presumption requires a much higher showing than to obtain a protective order.” *Midwest Athletics and Sports Alliance LLC v. Ricoh USA, Inc.*, 332 F.R.D. 159, 104 Fed. R. Serv. 3d 1179 (E.D. Pa. 2019).

Here, Legislative Defendants understand that Plaintiffs intend to proffer their experts’ proprietary interest in the source code, source data, input parameters, and at least some outputted data as justifying continued secrecy. This interest would, if proffered, be insufficient in this case. The State Supreme Court has already concluded that “the great public interest in the subject matter of these cases” and their “importance . . . to the constitutional jurisprudence of this State” justified a “preliminary injunction” and upheaval of all election deadlines and processes in the state. 12/8/21

Supreme Court Order 3. In issuing an injunction the Supreme Court had to find a likelihood of success, which in turn must have been predicated on Plaintiffs’ expert reports. The public’s interest in learning why their elections have been thrown into chaos unquestionably outweighs Plaintiffs’ experts’ interests in maintaining the basis of that injunction—and any further claims Plaintiffs will assert or relief they will seek—under lock and key. *See, e.g., Doe v. Pub. Citizen*, 749 F.3d 246, 274 (4th Cir. 2014) (“[T]he public interest in the underlying litigation is especially compelling given that Company Doe sued a federal agency.”); *Doe v. Megless*, 654 F.3d 404, 411 (3d Cir.2011) (explaining that public’s interest in disclosure of plaintiff’s identity was “heightened” because defendants were “public officials and government bodies” (citation omitted) (internal quotation marks omitted)); *Femedeer v. Haun*, 227 F.3d 1244, 1246 (10th Cir.2000) (noting that “the public has an important interest in access to legal proceedings, particularly those attacking . . . properly enacted legislation”).

In the ordinary case where proprietary or trade secret information is deemed a sufficient justification for secrecy, the issues involve the private rights of the litigants to compensation from those trade secrets or else intellectual property alleged to be similar to those trade secrets.⁴ The posture of this case is fundamentally different. Plaintiffs’ experts came to court to use their data as a sword and to obtain a complete modification of the voting rights and opportunities of all North Carolina residents. Legislative Defendants did not ask them to do this; they chose to participate. It is one thing for the makers of Coca-Cola to maintain the secret recipe under seal in an intellectual property dispute; it is another thing for them to come into court and ask duly enacted election laws

⁴ As an initial matter, Plaintiffs would have to substantiate and prove up any such assertion, and they have yet to do so. *See Doe*, 749 F.3d at 274 (“[C]ourts consistently have rejected anonymity requests to prevent speculative and unsubstantiated claims of harm to a company’s reputational or economic interests.”).

to be struck down based on that very recipe. Plaintiffs’ experts have every right to maintain their proprietary information in secret for purposes of their private work, and that right is not in question here. Legislative Defendants, however, submit that Plaintiffs’ experts have no right to place that information at issue as, in effect, a constitutional standard in seeking the exceptional relief on a matter of this level of public importance and yet maintain secrecy. Their remedy, if they value secrecy, is not to seek to use their information as a sword, as they have done here.

Indeed, the public nature of the source code and related materials is difficult to overstate. As explained, Plaintiffs admitted, *in the first sentence of their complaint*, that this case seeks to harness math and computer science to crack the longstanding puzzle of identifying “some limited and precise rationale” to identify and adjudicate claims of partisan gerrymandering. *Vieth*, 541 U.S. at 306 (Kennedy, J., concurring). Their expert materials provide their effort at such a rationale. And that, in turn, is a proposed component of the constitutional law of North Carolina. If Plaintiffs succeed, the General Assembly’s plans will be judged according to their experts’ source code and methodologies. So, too, will any remedial plans in this case, as well as future plans subject to future challenge. Plaintiffs cannot assert that, if a plan falls on one side of their expert’s code, it is unconstitutional and, if it falls on the other, it is constitutional and, in the next breath, contend that the code is proprietary. This Court has no more right to maintain the code in secret than it has the right to maintain its principles of black-letter constitutional law in secret.

In this respect, it is critical to emphasize that the rights at issue are not solely those of Legislative Defendants. The First Amendment protects the *public’s* right of access. Thus, the *Harper* Plaintiffs’ assertion that they have reached agreements over protective orders with Legislative Defendants and other litigants in other cases rings hollow. A party cannot “waive[] the public’s First Amendment and common law right of access to court filings. The court’s obligation

to keep its records open for public inspection is not condition on an objection from anybody. Rather, the court has an independent obligation to consider the rights of the public.” *Rudd Equipment Co. v. John Deere Construction & Forestry Co.*, 834 F.3d 589, 595 (6th Cir. 2016) (cleaned up). Even if Legislative Defendants were not making this motion, the Court would have an obligation to command public disclosure of the materials at issue.

Legislative Defendants are in all events prejudiced by Plaintiffs’ failure to adhere to their obligations, and they would be prejudiced by anything short of full disclosure. This case is set on an extraordinary schedule, and Legislative Defendants’ experts will not have time to evaluate Plaintiffs’ experts’ work between December 23 and December 28. And, if Plaintiffs continue in their obstinance, Legislative Defendants will need to seek this Court’s relief during that time period, which would be impossible to attain (short of an order excluding Plaintiffs’ experts’ testimony in its entirety, which Legislative Defendants are prepared to seek). By contrast, in *Common Cause v. Lewis*, a case Plaintiffs often cite, the discovery period lasted five-and-a-half months. 12/13/21 Order 3–4 (observing this critical difference). Legislative Defendants were permitted six weeks to prepare rebuttal reports—a period subsequently compressed to about 22 days, but still vastly longer than the *five days* the Legislative Defendants have been afforded under the present circumstances. *See* Exhibits 9-10, Lewis 2/15/19 order and 3/21/19 amended order. Legislative Defendants require as much latitude as possible to try to mitigate the prejudice caused by this highly truncated period for preparation of rebuttal reports, and that requires immediate access to the preliminary-injunction phase reports, data, and source code.

Further, production under a protective order requiring secrecy would prejudice Legislative Defendants in multiple respects. For one thing, most, if not all, of the experts who testify in these cases are academic political scientists, statisticians, and mathematicians, and such experts—as well

as those experts Legislative Defendants may call upon in this case—publish and teach as well as serve as experts. In the experience of Legislative Defendants’ counsel—who have extensive experience in this field—experts can and will refuse to examine source code produced under a non-disclosure agreement out of fear that doing so will inhibit their ability to engage in scholarship that draws upon or criticizes the work of others whose code or algorithms were provided under such an NDA, without risk of being accused (rightly or wrongly) of infringing such an NDA. This chilling effect may result in Plaintiffs’ experts’ work being partially or fully free from any vetting in this case of paramount public interest. For another thing, the deadlines in this case are too stringent for secrecy. A protective order would by necessity entail sealing portions of deposition transcripts, closing parts of the trial, sealing exhibits and litigating over the metes and bounds of such sealing and closure. That process is cumbersome, and there simply is not time for the parties and the Court—with everything else that must be done—to litigate those issues and achieve a result that is legally correct and fair to the parties and the public interest.

In sum, the Court should not oblige any request for continued secrecy. The redistricting plans Plaintiffs challenge were drawn in public in video-recorded sessions. Any plaintiffs who wants those plans thrown out should be required to subject that plaintiff’s methods to the same public scrutiny that is being applied to the General Assembly’s work. The Court should order immediate production of all source code, source data, input parameters, and all outputted data pertaining to the expert reports served on Legislative Defendants at the preliminary injunction stage—and it should do so promptly.

CONCLUSION

The motion should be granted.

Respectfully submitted this the 14th day of December, 2021.

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com
Thomas A. Farr (NC Bar No. 10871)
tom.farr@nelsonmullins.com
Alyssa M. Riggins (NC Bar No. 52366)
alyssa.riggins@nelsonmullins.com
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 329-3800

BAKER HOSTETLER LLP
Mark E. Braden* (DC Bar No. 419915)
MBraden@bakerlaw.com
Katherine McKnight* (VA Bar No. 81482)
kmcknight@bakerlaw.com
1050 Connecticut Ave NW, Suite 1100 Washington DC
20036
* Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

It is hereby certified that on this the 14th day of December, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
ngghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com
Counsel for Plaintiffs North Carolina League of Conservation Voters, et al.

Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
Counsel for the North Carolina State Board of Elections; Damon Circosta, Stella Anderson, Jeff Carmon III, Stacy Eggers IV, and Tommy Tucker, in their official capacities with the State Board of Elections

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
Counsel for Plaintiffs North Carolina League of Conservation Voters, et al.

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com

Exhibit 1

Alyssa Riggins

From: McKnight, Katherine L. <kmcknight@bakerlaw.com>
Sent: Thursday, December 9, 2021 12:05 PM
To: Theodore, Elisabeth; Feldman, Stephen; Burton Craige; Narendra Ghosh; Paul Smith; 'melias@elias.law'; 'abbranch@elias.law'; Imadduri@elias.law; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton; Callahan, Sam; Doerr, Adam; Zimmerman, Erik; 'Hirsch, Sam'; Amunson, Jessica Ring; Kali Brace; Schauf, Zachary C.; Mittal, Urja R.
Cc: Phil Strach; Tom Farr; John Branch; Alyssa Riggins; Braden, E. Mark; Raile, Richard; Brennan, Stephanie; Majmundar, Amar; 'tsteed@ncdoj.gov'
Subject: NCLCV v. Hall (21 CVS 15426)/Harper v. Hall (21 CVS 500085) -- Request for source code and related information

◀External Email▶ - From: prvs=8977a768b0=kmcknight@bakerlaw.com

Dear Plaintiffs' Counsel in the *Harper* and *NCLCV* matters,

We write to request copies of the source code, source data, input parameters (i.e., the exact model specifications and input parameters given to the computer programs to perform the simulations analysis), and all data outputted from those simulations (including reporting as well as shapefiles or block-assignment files for the simulated plans) for the analyses that formed the basis for the expert reports of Drs. Chen and Pegden in the *Harper* case. We also request the data and model parameters underlying Dr. Duchin's expert report in the *NCLCV* matter. Finally, we request the source code, source data, input parameters (as defined above), and output data (as defined above) used to generate the three "Optimized" Maps/Plans that the *NCLCV* Plaintiffs asked Dr. Duchin to assess and that they produced to the Court.

Considering the tight timeframe governing these cases, we ask that Plaintiffs produce these materials by 12pm Monday, December 13. We are available to discuss best ways to transfer this material.

If Plaintiffs in either case plan to withhold any of these materials, we ask for notice of that refusal by 12pm Monday, December 13.

Thank you very much,

Kate

Katherine L. McKnight
Partner

BakerHostetler
Washington Square
1050 Connecticut Ave, N.W. | Suite 1100
Washington, DC 20036-5403
T +1.202.861.1618

kmcknight@bakerlaw.com
bakerlaw.com



addressed and may contain information that is privileged, confidential, or protected by law. If you are not the intended recipient you are hereby notified that any dissemination, copying or distribution of this email or its contents is strictly prohibited. If you have received this message in error, please notify us immediately by replying to the message and deleting it from your computer.

Any tax advice in this email is for information purposes only. The content of this email is limited to the matters specifically addressed herein and may not contain a full description of all relevant facts or a complete analysis of all relevant issues or authorities.

Internet communications are not assured to be secure or clear of inaccuracies as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. Therefore, we do not accept responsibility for any errors or omissions that are present in this email, or any attachment, that have arisen as a result of e-mail transmission.

Exhibit 2

Alyssa Riggins

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Friday, December 10, 2021 1:13 PM
To: Alyssa Riggins; 'Feldman, Stephen'
Cc: Phil Strach; Tom Farr; John Branch; 'Mark Braden'; 'Katherine McKnight'; 'Richard Raile'; 'Brennan, Stephanie'; 'Majmundar, Amar'; 'tsteed@ncdoj.gov'; 'Burton Craig'; 'Narendra Ghosh'; 'Paul Smith'; 'melias@elias.law'; 'abbranch@elias.law'; 'lmadduri@elias.law'; 'jshelly@elias.law'; 'gwhite@elias.law'; 'akhanna@elias.law'; Jones, Stanton; Callahan, Sam; 'Doerr, Adam'; 'Zimmerman, Erik'; 'Hirsch, Sam'; 'Amunson, Jessica Ring'; 'Kali Bracey'; 'Schauf, Zachary C.'; 'Mittal, Urja R.'
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order
Attachments: 2019.3.29 Protective Order.docx

Dear all:

Two updates from the Harper plaintiffs. First, in response to Kate's email yesterday requesting source code, the Harper Plaintiffs are happy to provide source code, inputs, and outputs from Dr. Chen and Dr. Pegden on Monday, on two conditions. First, will Defendants agree to enter into the attached protective order that we all agreed on in Common Cause? We'll update it for this case. Second, will defendants provide, by Monday, a list of the incumbent addresses for both congressional and state legislative districts that the Legislative Defendants used in drawing the maps? Consistent with the experience in the Common Cause case, we will need their home addresses, not P.O. boxes or office addresses. I should note that we do intend to serve updated expert reports, but we are nonetheless happy to send you on Monday the code from the versions we served with the preliminary injunction motion.

Second, on further consideration, we'd like to propose two days for expert video depositions, with a 4 hour cap (including 1 hour for direct) for each expert. We would submit the videos (or excerpts) to the judges.

Given that the deadline is today, please let us know your thoughts on scheduling. We are happy to jump on the phone again.

Best,
Elisabeth

From: Theodore, Elisabeth
Sent: Thursday, December 9, 2021 5:19 PM
To: 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; Feldman, Stephen <SFeldman@robinsonbradshaw.com>
Cc: Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craig <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf,

Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

All:

Thanks for the discussion earlier today. As promised, our proposal is as follows, in general strokes. As we noted, our proposal is no live evidentiary hearing, and the court would make findings of fact and conclusions of law on the paper submissions. We added a few additional deadlines in addition to what we described on the call, and there may be need to be some other deadlines in there too, like for evidentiary objections. We also pushed back our proposal for a date for submission of proposed findings and conclusions to Jan. 6.

Dec. 15 - deadline to amend pleadings
Dec. 21 - deadline for defendants to answer
Dec. 21 - deadline to exchange evidence (in the form of expert reports, fact witness affidavits)
Dec. 28 - deadline to exchange rebuttal evidence (in the form of rebuttal expert reports)
Dec. 31 - deadline to submit reply expert reports
Jan. 6 - deadline to submit proposed findings of fact and conclusions of law to the Court
Jan. 10 - court could schedule argument if it chooses
Jan. 11 - deadline for court's decision on the merits

As I mentioned, we would agree to mutual foregoing of expert depositions, but reserve the right to take fact witness depositions (which we would propose to do by Zoom). We might want to agree to a deadline to exchange the names of all potential fact witnesses to speed that process along.

From: Alyssa Riggins <alyssa.riggins@nelsonmullins.com>
Sent: Thursday, December 9, 2021 11:41 AM
To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Feldman, Stephen <SFeldman@robinsonbradshaw.com>
Cc: Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rRaile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; zzz.External.Imadduri@elias.law <Imadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauff, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

External E-mail

Hi Elisabeth,

Phil and Kate are available to speak with you at 3:00. Could you please circulate a meeting invitation and be sure to include them?

Best,
Alyssa

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Wednesday, December 8, 2021 6:10 PM
To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>
Cc: Phil Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rRaile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; Imadduri@elias.law; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

◀External Email▶ - From: prvs=969f644b3=Elisabeth.Theodore@arnoldporter.com

Counsel:

In light of the court's order, we think it would be best to meet and confer tomorrow on the schedule. Are representatives from all parties available at 1pm or at 3pm?

Best,
Elisabeth

From: Rossi, Alison J. <Alison.J.Rossi@nccourts.org>
Sent: Wednesday, December 8, 2021 5:14 PM
To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>; Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>
Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; john.branch@nelsonmullins.com; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rRaile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; zzz.External.Imadduri@elias.law <Imadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

External E-mail

Hello all,

Based on the Supreme Court's order, dated today, December 8, 2021, the court has asked that you provide a proposed scheduling order by Friday, December 10, 2021.

Best,

Alison J. Rossi
Judicial Fellow
North Carolina Judicial Branch
M 919-259-9917
D 919-890-1679
O 919-890-1670

From: Rossi, Alison J.

Sent: Monday, December 6, 2021 1:01 PM

To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>; Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>

Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>;

john.branch@nelsonmullins.com; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden

<MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>;

Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov'

<tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith

<psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>;

'lmadduri@elias.law' <lmadduri@elias.law>; 'jshelly@elias.law' <jshelly@elias.law>; 'gwhite@elias.law'

<gwhite@elias.law>; 'akhanna@elias.law' <akhanna@elias.law>; Theodore, Elisabeth

<Elisabeth.Theodore@arnoldporter.com>; 'Jones, Stanton' <Stanton.Jones@arnoldporter.com>;

'sam.callahan@arnoldporter.com' <sam.callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>;

Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring

<JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja

R. <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

Hello all,

The court is requesting that the parties in the above captioned case submit a proposed scheduling order by next Tuesday, December 14th, 2021.

While this case and *Harper v. Hall* (21 CVS 500085) have been consolidated, I am sending this message separately to the parties in each case.

Best,

Alison J. Rossi
Judicial Fellow
North Carolina Judicial Branch
M 919-259-9917
D 919-890-1679
O 919-890-1670

From: Feldman, Stephen <SFeldman@robinsonbradshaw.com>

Sent: Friday, December 3, 2021 5:21 PM

To: Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>; Rossi, Alison J. <Alison.J.Rossi@nccourts.org>

Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>;

john.branch@nelsonmullins.com; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden

<MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>;

Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov'

<tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith

<psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; 'lmadduri@elias.law' <lmadduri@elias.law>; 'jshelly@elias.law' <jshelly@elias.law>; 'gwhite@elias.law' <gwhite@elias.law>; 'akhanna@elias.law' <akhanna@elias.law>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Jones, Stanton' <Stanton.Jones@arnoldporter.com>; 'sam.callahan@arnoldporter.com' <sam.callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>

Subject: NCLCV v Hall (21 CVS 15426) -- Notice of Appeal

Dear Ms. Myers and Ms. Rossi:

In *NCLCV v Hall*, attached please find a notice of appeal filed this afternoon. I have copied all counsel in the coordinated cases on this email.

Thank you again for your coordination of these matters. All the best.

Stephen D. Feldman

Pronouns: He/Him/His

Robinson Bradshaw
t : 919.239.2603
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601

sfeldman@robinsonbradshaw.com | [Bio](#)
robinsonbradshaw.com

This email may contain material that is CONFIDENTIAL, PRIVILEGED and/or ATTORNEY WORK PRODUCT for the sole use of the intended recipient. Any review, reliance, distribution or forwarding by others without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

E-mail correspondence to and from this address may be subject to the North Carolina public records laws and if so, may be disclosed.

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

Exhibit 3

Alyssa Riggins

From: McKnight, Katherine L. <kmcknight@bakerlaw.com>
Sent: Monday, December 13, 2021 8:23 AM
To: Theodore, Elisabeth; Alyssa Riggins; 'Feldman, Stephen'
Cc: Phil Strach; Tom Farr; John Branch; Braden, E. Mark; Raile, Richard; 'Brennan, Stephanie'; 'Majmundar, Amar'; 'tsteed@ncdoj.gov'; 'Burton Craige'; 'Narendra Ghosh'; 'Paul Smith'; 'melias@elias.law'; 'abbranch@elias.law'; 'lmadduri@elias.law'; 'jshelly@elias.law'; 'gwhite@elias.law'; 'akhanna@elias.law'; Jones, Stanton; Callahan, Sam; 'Doerr, Adam'; 'Zimmerman, Erik'; 'Hirsch, Sam'; 'Amunson, Jessica Ring'; 'Kali Bracey'; 'Schauf, Zachary C.'; 'Mittal, Urja R.'
Subject: NCLCV v Hall (21 CVS 15426) -- source code production
Attachments: 2019.3.29 Protective Order -- REDLINE.pdf

Dear Elisabeth,

Thank you for your e-mail below. Regarding the discussion below about a protective order, we believe the data underlying Plaintiffs' expert reports—including the source code, the data fed into the code, and the output—presents a matter of overriding public importance in the context of this case. We therefore cannot agree to a protective order and submit that it is Plaintiffs' obligation to disclose the data supporting their expert analysis, and Plaintiffs' burden to procure a protective order from the Court.

We are all working on an incredibly condensed schedule and propose the following solution:

1. Without waiving their position, Legislative Defendants are amenable to agreeing to the attached version of the protective order (*see* attached redline proposing edit to substance of the Order) pending resolution of Plaintiffs' motion for protective order so that Plaintiffs may produce today what we requested, namely:
 - a. "copies of the source code, source data, input parameters (i.e., the exact model specifications and input parameters given to the computer programs to perform the simulations analysis), and all data outputted from those simulations (including reporting as well as shapefiles or block-assignment files for the simulated plans) for the analyses that formed the basis for the expert reports of Drs. Chen and Pegden in the Harper case. We also request the data and model parameters underlying Dr. Duchin's expert report in the NCLCV matter. Finally, we request the source code, source data, input parameters (as defined above), and output data (as defined above) used to generate the three "Optimized" Maps/Plans that the NCLCV Plaintiffs asked Dr. Duchin to assess and that they produced to the Court." (Request dated Thursday, Dec. 9.)
2. Plaintiffs agree to file a motion for protective order by Wednesday, December 15, 2021, at 5pm and Legislative Defendants will file their opposition brief by Friday, December 17, 2021, at 5pm. If Plaintiffs fail to file a motion for protective order by that date, Legislative Defendants will understand that Plaintiffs have waived any protective interest in the material and the agreed protective order will no longer bind the parties.
3. If the Court denies Plaintiffs' motion for protective order, then the agreed protective order will no longer bind the parties.
4. If the Court grants Plaintiffs' motion for protective order, then the agreed protective order will continue to bind the parties.

For NCLCV counsel, we do not know where NCLCV Plaintiffs stand in this discussion (and pardon me if I missed an e-mail) but if you believe Dr. Duchin's materials require a protective order we suggest the same framework for resolution.

Finally, we understand your request regarding incumbent addresses and are working to gather residential addresses for incumbents. We hope to update you later today as to status.

We are happy to join a call today if that would aid in resolving this issue.

Thank you all,

Kate

Katherine L. McKnight
Partner

BakerHostetler

Washington Square
1050 Connecticut Ave, N.W. | Suite 1100
Washington, DC 20036-5403
T +1.202.861.1618

kmcknight@bakerlaw.com
bakerlaw.com



From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Sent: Friday, December 10, 2021 1:13 PM

To: 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>

Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; McKnight, Katherine L. <kmcknight@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranche@elias.law' <abranche@elias.law>; 'Imadduri@elias.law'; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

[External Email: Use caution when clicking on links or opening attachments.]

Dear all:

Two updates from the Harper plaintiffs. First, in response to Kate's email yesterday requesting source code, the Harper Plaintiffs are happy to provide source code, inputs, and outputs from Dr. Chen and Dr. Pegden on Monday, on two conditions. First, will Defendants agree to enter into the attached protective order that we all agreed on in Common Cause? We'll update it for this case. Second, will defendants provide, by Monday, a list of the incumbent addresses for both congressional and state legislative districts that the Legislative Defendants used in drawing the maps? Consistent

with the experience in the Common Cause case, we will need their home addresses, not P.O. boxes or office addresses. I should note that we do intend to serve updated expert reports, but we are nonetheless happy to send you on Monday the code from the versions we served with the preliminary injunction motion.

Second, on further consideration, we'd like to propose two days for expert video depositions, with a 4 hour cap (including 1 hour for direct) for each expert. We would submit the videos (or excerpts) to the judges.

Given that the deadline is today, please let us know your thoughts on scheduling. We are happy to jump on the phone again.

Best,
Elisabeth

From: Theodore, Elisabeth

Sent: Thursday, December 9, 2021 5:19 PM

To: 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; Feldman, Stephen <SFeldman@robinsonbradshaw.com>

Cc: Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <SBrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

All:

Thanks for the discussion earlier today. As promised, our proposal is as follows, in general strokes. As we noted, our proposal is no live evidentiary hearing, and the court would make findings of fact and conclusions of law on the paper submissions. We added a few additional deadlines in addition to what we described on the call, and there may be need to be some other deadlines in there too, like for evidentiary objections. We also pushed back our proposal for a date for submission of proposed findings and conclusions to Jan. 6.

Dec. 15 - deadline to amend pleadings

Dec. 21 - deadline for defendants to answer

Dec. 21 - deadline to exchange evidence (in the form of expert reports, fact witness affidavits)

Dec. 28 - deadline to exchange rebuttal evidence (in the form of rebuttal expert reports)

Dec. 31 - deadline to submit reply expert reports

Jan. 6 - deadline to submit proposed findings of fact and conclusions of law to the Court

Jan. 10 - court could schedule argument if it chooses

Jan. 11 - deadline for court's decision on the merits

As I mentioned, we would agree to mutual foregoing of expert depositions, but reserve the right to take fact witness depositions (which we would propose to do by Zoom). We might want to agree to a deadline to exchange the names of all potential fact witnesses to speed that process along.

From: Alyssa Riggins <alyssa.riggins@nelsonmullins.com>
Sent: Thursday, December 9, 2021 11:41 AM
To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Feldman, Stephen <SFeldman@robinsonbradshaw.com>
Cc: Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

External E-mail

Hi Elisabeth,

Phil and Kate are available to speak with you at 3:00. Could you please circulate a meeting invitation and be sure to include them?

Best,
Alyssa

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Wednesday, December 8, 2021 6:10 PM
To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>
Cc: Phil Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; lmadduri@elias.law; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

◀External Email▶ - From: prvs=969f644b3=Elisabeth.Theodore@arnoldporter.com

Counsel:

In light of the court's order, we think it would be best to meet and confer tomorrow on the schedule. Are representatives from all parties available at 1pm or at 3pm?

Best,
Elisabeth

From: Rossi, Alison J. <Alison.J.Rossi@nccourts.org>
Sent: Wednesday, December 8, 2021 5:14 PM
To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>; Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>
Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>;
john.branch@nelsonmullins.com; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden
<MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>;
Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov'
<tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith
<psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>;
zzz.External.Imadduri@elias.law <Imadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>;
zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Theodore,
Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam
<Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik
<EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring
<JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja
R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

External E-mail

Hello all,

Based on the Supreme Court's order, dated today, December 8, 2021, the court has asked that you provide a proposed scheduling order by Friday, December 10, 2021.

Best,

Alison J. Rossi
Judicial Fellow
North Carolina Judicial Branch
M 919-259-9917
D 919-890-1679
O 919-890-1670

From: Rossi, Alison J.
Sent: Monday, December 6, 2021 1:01 PM
To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>; Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>
Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>;
john.branch@nelsonmullins.com; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden
<MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>;
Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov'
<tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith
<psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>;
'Imadduri@elias.law' <Imadduri@elias.law>; 'jshelly@elias.law' <jshelly@elias.law>; 'gwhite@elias.law'
<gwhite@elias.law>; 'akhanna@elias.law' <akhanna@elias.law>; Theodore, Elisabeth
<Elisabeth.Theodore@arnoldporter.com>; 'Jones, Stanton' <Stanton.Jones@arnoldporter.com>;
'sam.callahan@arnoldporter.com' <sam.callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>;
Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring

<JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

Hello all,

The court is requesting that the parties in the above captioned case submit a proposed scheduling order by next Tuesday, December 14th, 2021.

While this case and *Harper v. Hall* (21 CVS 500085) have been consolidated, I am sending this message separately to the parties in each case.

Best,

Alison J. Rossi
Judicial Fellow
North Carolina Judicial Branch
M 919-259-9917
D 919-890-1679
O 919-890-1670

From: Feldman, Stephen <SFeldman@robinsonbradshaw.com>
Sent: Friday, December 3, 2021 5:21 PM
To: Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>; Rossi, Alison J. <Alison.J.Rossi@nccourts.org>
Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; john.branch@nelsonmullins.com; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; 'lmadduri@elias.law' <lmadduri@elias.law>; 'jshelly@elias.law' <jshelly@elias.law>; 'gwhite@elias.law' <gwhite@elias.law>; 'akhanna@elias.law' <akhanna@elias.law>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'sam.callahan@arnoldporter.com' <sam.callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: NCLCV v Hall (21 CVS 15426) -- Notice of Appeal

Dear Ms. Myers and Ms. Rossi:

In *NCLCV v Hall*, attached please find a notice of appeal filed this afternoon. I have copied all counsel in the coordinated cases on this email.

Thank you again for your coordination of these matters. All the best.

Stephen D. Feldman
Pronouns: He/Him/His

Robinson Bradshaw
t : 919.239.2603
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601

sfeldman@robinsonbradshaw.com | [Bio
robinsonbradshaw.com](http://robinsonbradshaw.com)

This email may contain material that is CONFIDENTIAL, PRIVILEGED and/or ATTORNEY WORK PRODUCT for the sole use of the intended recipient. Any review, reliance, distribution or forwarding by others without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

E-mail correspondence to and from this address may be subject to the North Carolina public records laws and if so, may be disclosed.

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

This email is intended only for the use of the party to which it is addressed and may contain information that is privileged, confidential, or protected by law. If you are not the intended recipient you are hereby notified that any dissemination, copying or distribution of this email or its contents is strictly prohibited. If you have received this message in error, please notify us immediately by replying to the message and deleting it from your computer.

Any tax advice in this email is for information purposes only. The content of this email is limited to the matters specifically addressed herein and may not contain a full description of all relevant facts or a complete analysis of all relevant issues or authorities.

Internet communications are not assured to be secure or clear of inaccuracies as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. Therefore, we do not accept responsibility for any errors or omissions that are present in this email, or any attachment, that have arisen as a result of e-mail transmission.

Exhibit 4

Alyssa Riggins

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Monday, December 13, 2021 12:04 PM
To: 'McKnight, Katherine L.'; Alyssa Riggins; 'Feldman, Stephen'
Cc: Phil Strach; Tom Farr; John Branch; Braden, E. Mark; Raile, Richard; 'Brennan, Stephanie'; 'Majmundar, Amar'; 'tsteed@ncdoj.gov'; 'Burton Craige'; 'Narendra Ghosh'; 'Paul Smith'; 'melias@elias.law'; 'abbranch@elias.law'; 'lmadduri@elias.law'; 'jshelly@elias.law'; 'gwhite@elias.law'; 'akhanna@elias.law'; Jones, Stanton; Callahan, Sam; 'Doerr, Adam'; 'Zimmerman, Erik'; 'Hirsch, Sam'; 'Amunson, Jessica Ring'; 'Kali Bracey'; 'Schauf, Zachary C.'; 'Mittal, Urja R.'
Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production

Kate:

As you know, the Legislative Defendants agreed to the exact same protective order covering the exact same source code material in the *Common Cause* litigation, which was also litigation of “overriding public importance.” And when we raised the protective order issue on Thursday during our meet and confer in response to your request for our expert materials at the PI stage, Phil said that a protective order wouldn’t be a problem. It is standard practice to enter into protective orders covering source code, and this protective order allows you and your experts full access to and use of all relevant information for any case-related purpose. If you have any concerns about the content of the protective order, we would be happy to discuss.

We are trying to accommodate your request to receive this source code and other backup material as quickly as possible, even though the materials you’ve requested relate to PI stage reports after the PI has already been granted. Given the extreme time constraints under which we are all working, we cannot understand why you would force the parties to engage in contested briefing about a protective order that you previously agreed to in materially identical litigation. Please let us know if you will reconsider. We are happy to discuss on the phone.

Also, please let us know what time today you will be able to send the incumbent addresses, which we asked for on Thursday and which we are indisputably entitled to. We know from the *Common Cause* litigation that this information is readily available to the legislative leaders, and this information was also used to generate the “Statpacks” that are available on the General Assembly’s website. It is critical that we receive this information now for our opening expert reports. If we do not hear from you by 5pm, we will seek relief from the Court, as we did in *Common Cause*.

Best,
Elisabeth

From: McKnight, Katherine L. <kmcknight@bakerlaw.com>
Sent: Monday, December 13, 2021 8:23 AM
To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>
Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan,

Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>
Subject: NCLCV v Hall (21 CVS 15426) -- source code production

External E-mail

Dear Elisabeth,

Thank you for your e-mail below. Regarding the discussion below about a protective order, we believe the data underlying Plaintiffs' expert reports—including the source code, the data fed into the code, and the output—presents a matter of overriding public importance in the context of this case. We therefore cannot agree to a protective order and submit that it is Plaintiffs' obligation to disclose the data supporting their expert analysis, and Plaintiffs' burden to procure a protective order from the Court.

We are all working on an incredibly condensed schedule and propose the following solution:

1. Without waiving their position, Legislative Defendants are amenable to agreeing to the attached version of the protective order (see attached redline proposing edit to substance of the Order) pending resolution of Plaintiffs' motion for protective order so that Plaintiffs may produce today what we requested, namely:
 - a. "copies of the source code, source data, input parameters (i.e., the exact model specifications and input parameters given to the computer programs to perform the simulations analysis), and all data outputted from those simulations (including reporting as well as shapefiles or block-assignment files for the simulated plans) for the analyses that formed the basis for the expert reports of Drs. Chen and Pegden in the Harper case. We also request the data and model parameters underlying Dr. Duchin's expert report in the NCLCV matter. Finally, we request the source code, source data, input parameters (as defined above), and output data (as defined above) used to generate the three "Optimized" Maps/Plans that the NCLCV Plaintiffs asked Dr. Duchin to assess and that they produced to the Court." (Request dated Thursday, Dec. 9.)
2. Plaintiffs agree to file a motion for protective order by Wednesday, December 15, 2021, at 5pm and Legislative Defendants will file their opposition brief by Friday, December 17, 2021, at 5pm. If Plaintiffs fail to file a motion for protective order by that date, Legislative Defendants will understand that Plaintiffs have waived any protective interest in the material and the agreed protective order will no longer bind the parties.
3. If the Court denies Plaintiffs' motion for protective order, then the agreed protective order will no longer bind the parties.
4. If the Court grants Plaintiffs' motion for protective order, then the agreed protective order will continue to bind the parties.

For NCLCV counsel, we do not know where NCLCV Plaintiffs stand in this discussion (and pardon me if I missed an e-mail) but if you believe Dr. Duchin's materials require a protective order we suggest the same framework for resolution.

Finally, we understand your request regarding incumbent addresses and are working to gather residential addresses for incumbents. We hope to update you later today as to status.

We are happy to join a call today if that would aid in resolving this issue.

Thank you all,

Kate

Katherine L. McKnight

Partner

BakerHostetler

Washington Square
1050 Connecticut Ave, N.W. | Suite 1100
Washington, DC 20036-5403
T +1.202.861.1618

kmcknight@bakerlaw.com

bakerlaw.com



From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Sent: Friday, December 10, 2021 1:13 PM

To: 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>

Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch'

<john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; McKnight, Katherine L.

<kmcknight@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>;

'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craigie'

<bcraigie@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>;

'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; 'Imadduri@elias.law';

'ishelly@elias.law'; 'gwhite@elias.law'; 'akhanna@elias.law'; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan,

Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik'

<EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring'

<JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal,

Urja R.' <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

[External Email: Use caution when clicking on links or opening attachments.]

Dear all:

Two updates from the Harper plaintiffs. First, in response to Kate's email yesterday requesting source code, the Harper Plaintiffs are happy to provide source code, inputs, and outputs from Dr. Chen and Dr. Pegden on Monday, on two conditions. First, will Defendants agree to enter into the attached protective order that we all agreed on in Common Cause? We'll update it for this case. Second, will defendants provide, by Monday, a list of the incumbent addresses for both congressional and state legislative districts that the Legislative Defendants used in drawing the maps? Consistent with the experience in the Common Cause case, we will need their home addresses, not P.O. boxes or office addresses. I should note that we do intend to serve updated expert reports, but we are nonetheless happy to send you on Monday the code from the versions we served with the preliminary injunction motion.

Second, on further consideration, we'd like to propose two days for expert video depositions, with a 4 hour cap (including 1 hour for direct) for each expert. We would submit the videos (or excerpts) to the judges.

Given that the deadline is today, please let us know your thoughts on scheduling. We are happy to jump on the phone again.

Best,
Elisabeth

From: Theodore, Elisabeth

Sent: Thursday, December 9, 2021 5:19 PM

To: 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; Feldman, Stephen <SFeldman@robinsonbradshaw.com>

Cc: Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abran@elias.law' <abran@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

All:

Thanks for the discussion earlier today. As promised, our proposal is as follows, in general strokes. As we noted, our proposal is no live evidentiary hearing, and the court would make findings of fact and conclusions of law on the paper submissions. We added a few additional deadlines in addition to what we described on the call, and there may be need to be some other deadlines in there too, like for evidentiary objections. We also pushed back our proposal for a date for submission of proposed findings and conclusions to Jan. 6.

Dec. 15 - deadline to amend pleadings

Dec. 21 - deadline for defendants to answer

Dec. 21 - deadline to exchange evidence (in the form of expert reports, fact witness affidavits)

Dec. 28 - deadline to exchange rebuttal evidence (in the form of rebuttal expert reports)

Dec. 31 - deadline to submit reply expert reports

Jan. 6 - deadline to submit proposed findings of fact and conclusions of law to the Court

Jan. 10 - court could schedule argument if it chooses

Jan. 11 - deadline for court's decision on the merits

As I mentioned, we would agree to mutual foregoing of expert depositions, but reserve the right to take fact witness depositions (which we would propose to do by Zoom). We might want to agree to a deadline to exchange the names of all potential fact witnesses to speed that process along.

From: Alyssa Riggins <alyssa.riggins@nelsonmullins.com>

Sent: Thursday, December 9, 2021 11:41 AM

To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Feldman, Stephen <SFeldman@robinsonbradshaw.com>

Cc: Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige

<bcrage@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

External E-mail

Hi Elisabeth,

Phil and Kate are available to speak with you at 3:00. Could you please circulate a meeting invitation and be sure to include them?

Best,
Alyssa

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Wednesday, December 8, 2021 6:10 PM
To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>
Cc: Phil Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcrage@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; lmadduri@elias.law; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

◀External Email▶ - From: prvs=969f644b3=Elisabeth.Theodore@arnoldporter.com

Counsel:

In light of the court's order, we think it would be best to meet and confer tomorrow on the schedule. Are representatives from all parties available at 1pm or at 3pm?

Best,
Elisabeth

From: Rossi, Alison J. <Alison.J.Rossi@nccourts.org>
Sent: Wednesday, December 8, 2021 5:14 PM
To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>; Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>
Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>;

Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

External E-mail

Hello all,

Based on the Supreme Court's order, dated today, December 8, 2021, the court has asked that you provide a proposed scheduling order by Friday, December 10, 2021.

Best,

Alison J. Rossi
Judicial Fellow
North Carolina Judicial Branch
M 919-259-9917
D 919-890-1679
O 919-890-1670

From: Rossi, Alison J.

Sent: Monday, December 6, 2021 1:01 PM

To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>; Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>

Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>;

john.branch@nelsonmullins.com; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>;

Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>;

'lmadduri@elias.law' <lmadduri@elias.law>; 'jshelly@elias.law' <jshelly@elias.law>; 'gwhite@elias.law' <gwhite@elias.law>; 'akhanna@elias.law' <akhanna@elias.law>; Theodore, Elisabeth

<Elisabeth.Theodore@arnoldporter.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; 'sam.callahan@arnoldporter.com' <sam.callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>;

Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja

R. <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

Hello all,

The court is requesting that the parties in the above captioned case submit a proposed scheduling order by next Tuesday, December 14th, 2021.

While this case and *Harper v. Hall* (21 CVS 500085) have been consolidated, I am sending this message separately to the parties in each case.

Best,

Alison J. Rossi
Judicial Fellow
North Carolina Judicial Branch
M 919-259-9917
D 919-890-1679
O 919-890-1670

From: Feldman, Stephen <SFeldman@robinsonbradshaw.com>
Sent: Friday, December 3, 2021 5:21 PM
To: Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>; Rossi, Alison J. <Alison.J.Rossi@nccourts.org>
Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>;
john.branch@nelsonmullins.com; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden
<MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rRaile@bakerlaw.com>;
Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov'
<tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith
<psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>;
'lmadduri@elias.law' <lmadduri@elias.law>; 'jshelly@elias.law' <jshelly@elias.law>; 'gwhite@elias.law'
<gwhite@elias.law>; 'akhanna@elias.law' <akhanna@elias.law>; Theodore, Elisabeth
<Elisabeth.Theodore@arnoldporter.com>; 'Jones, Stanton' <Stanton.Jones@arnoldporter.com>;
'sam.callahan@arnoldporter.com' <sam.callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>;
Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring
<JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja
R. <UMittal@jenner.com>
Subject: NCLCV v Hall (21 CVS 15426) -- Notice of Appeal

Dear Ms. Myers and Ms. Rossi:

In *NCLCV v Hall*, attached please find a notice of appeal filed this afternoon. I have copied all counsel in the coordinated cases on this email.

Thank you again for your coordination of these matters. All the best.

Stephen D. Feldman

Pronouns: He/Him/His

Robinson Bradshaw
t : 919.239.2603
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601

sfeldman@robinsonbradshaw.com | [Bio](#)
robinsonbradshaw.com

This email may contain material that is CONFIDENTIAL, PRIVILEGED and/or ATTORNEY WORK PRODUCT for the sole use of the intended recipient. Any review, reliance, distribution or forwarding by others without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

E-mail correspondence to and from this address may be subject to the North Carolina public records laws and if so, may be disclosed.

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

This email is intended only for the use of the party to which it is addressed and may contain information that is privileged, confidential, or protected by law. If you are not the intended recipient you are hereby notified that any dissemination, copying or distribution of this email or its contents is strictly prohibited. If you have received this message in error, please notify us immediately by replying to the message and deleting it from your computer.

Any tax advice in this email is for information purposes only. The content of this email is limited to the matters specifically addressed herein and may not contain a full description of all relevant facts or a complete analysis of all relevant issues or authorities.

Internet communications are not assured to be secure or clear of inaccuracies as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. Therefore, we do not accept responsibility for any errors or omissions that are present in this email, or any attachment, that have arisen as a result of e-mail transmission.

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

Exhibit 5

Alyssa Riggins

From: Schauf, Zachary C. <ZSchauf@jenner.com>
Sent: Monday, December 13, 2021 11:43 AM
To: McKnight, Katherine L.; Theodore, Elisabeth; Alyssa Riggins; 'Feldman, Stephen'
Cc: Phil Strach; Tom Farr; John Branch; Braden, E. Mark; Raile, Richard; 'Brennan, Stephanie'; 'Majmundar, Amar'; 'tsteed@ncdoj.gov'; 'Burton Craig'; 'Narendra Ghosh'; 'Paul Smith'; 'melias@elias.law'; 'abbranch@elias.law'; Imadduri@elias.law; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton; Callahan, Sam; 'Doerr, Adam'; 'Zimmerman, Erik'; Hirsch, Sam; Amunson, Jessica Ring; Bracey, Kali N.; Mittal, Urja R.
Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production

Kate,

The NCLCV Plaintiffs' position is that these requests are premature until the Court has resolved the scheduling issues that have been placed before it. In particular, as you know, the NCLCV Plaintiffs' position is that appropriate disclosures should be made when the parties submit their respective expert reports. For avoidance of doubt, the NCLCV Petitioners do not agree to produce the materials you describe below today and reserve all rights.

Regards,

Zach

From: McKnight, Katherine L. <kmcknight@bakerlaw.com>
Sent: Monday, December 13, 2021 8:23 AM
To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>
Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craig' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; Imadduri@elias.law; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; Hirsch, Sam <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Bracey, Kali N. <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: NCLCV v Hall (21 CVS 15426) -- source code production

External Email – Exercise Caution
Dear Elisabeth,

Thank you for your e-mail below. Regarding the discussion below about a protective order, we believe the data underlying Plaintiffs' expert reports—including the source code, the data fed into the code, and the output—presents a matter of overriding public importance in the context of this case. We therefore cannot agree to a protective order and submit that it is Plaintiffs' obligation to disclose the data supporting their expert analysis, and Plaintiffs' burden to procure a protective order from the Court.

We are all working on an incredibly condensed schedule and propose the following solution:

1. Without waiving their position, Legislative Defendants are amenable to agreeing to the attached version of the protective order (see attached redline proposing edit to substance of the Order) pending resolution of Plaintiffs' motion for protective order so that Plaintiffs may produce today what we requested, namely:
 - a. "copies of the source code, source data, input parameters (i.e., the exact model specifications and input parameters given to the computer programs to perform the simulations analysis), and all data outputted from those simulations (including reporting as well as shapefiles or block-assignment files for the simulated plans) for the analyses that formed the basis for the expert reports of Drs. Chen and Pegden in the Harper case. We also request the data and model parameters underlying Dr. Duchin's expert report in the NCLCV matter. Finally, we request the source code, source data, input parameters (as defined above), and output data (as defined above) used to generate the three "Optimized" Maps/Plans that the NCLCV Plaintiffs asked Dr. Duchin to assess and that they produced to the Court." (Request dated Thursday, Dec. 9.)
2. Plaintiffs agree to file a motion for protective order by Wednesday, December 15, 2021, at 5pm and Legislative Defendants will file their opposition brief by Friday, December 17, 2021, at 5pm. If Plaintiffs fail to file a motion for protective order by that date, Legislative Defendants will understand that Plaintiffs have waived any protective interest in the material and the agreed protective order will no longer bind the parties.
3. If the Court denies Plaintiffs' motion for protective order, then the agreed protective order will no longer bind the parties.
4. If the Court grants Plaintiffs' motion for protective order, then the agreed protective order will continue to bind the parties.

For NCLCV counsel, we do not know where NCLCV Plaintiffs stand in this discussion (and pardon me if I missed an e-mail) but if you believe Dr. Duchin's materials require a protective order we suggest the same framework for resolution.

Finally, we understand your request regarding incumbent addresses and are working to gather residential addresses for incumbents. We hope to update you later today as to status.

We are happy to join a call today if that would aid in resolving this issue.

Thank you all,

Kate

Katherine L. McKnight
Partner

BakerHostetler

Washington Square
1050 Connecticut Ave, N.W. | Suite 1100
Washington, DC 20036-5403
T +1.202.861.1618

kmcknight@bakerlaw.com
bakerlaw.com



From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Friday, December 10, 2021 1:13 PM
To: 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>
Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; McKnight, Katherine L. <kmcknight@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; 'lmadduri@elias.law'; 'jshelly@elias.law'; 'gwhite@elias.law'; 'akhanna@elias.law'; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

[External Email: Use caution when clicking on links or opening attachments.]

Dear all:

Two updates from the Harper plaintiffs. First, in response to Kate's email yesterday requesting source code, the Harper Plaintiffs are happy to provide source code, inputs, and outputs from Dr. Chen and Dr. Pegden on Monday, on two conditions. First, will Defendants agree to enter into the attached protective order that we all agreed on in Common Cause? We'll update it for this case. Second, will defendants provide, by Monday, a list of the incumbent addresses for both congressional and state legislative districts that the Legislative Defendants used in drawing the maps? Consistent with the experience in the Common Cause case, we will need their home addresses, not P.O. boxes or office addresses. I should note that we do intend to serve updated expert reports, but we are nonetheless happy to send you on Monday the code from the versions we served with the preliminary injunction motion.

Second, on further consideration, we'd like to propose two days for expert video depositions, with a 4 hour cap (including 1 hour for direct) for each expert. We would submit the videos (or excerpts) to the judges.

Given that the deadline is today, please let us know your thoughts on scheduling. We are happy to jump on the phone again.

Best,
Elisabeth

From: Theodore, Elisabeth
Sent: Thursday, December 9, 2021 5:19 PM
To: 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; Feldman, Stephen <SFeldman@robinsonbradshaw.com>
Cc: Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; 'zzz.External.lmadduri@elias.law' <lmadduri@elias.law>; 'zzz.External.jshelly@elias.law' <jshelly@elias.law>; 'zzz.External.gwhite@elias.law' <gwhite@elias.law>; 'zzz.External.akhanna@elias.law' <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam

<ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

All:

Thanks for the discussion earlier today. As promised, our proposal is as follows, in general strokes. As we noted, our proposal is no live evidentiary hearing, and the court would make findings of fact and conclusions of law on the paper submissions. We added a few additional deadlines in addition to what we described on the call, and there may be need to be some other deadlines in there too, like for evidentiary objections. We also pushed back our proposal for a date for submission of proposed findings and conclusions to Jan. 6.

Dec. 15 - deadline to amend pleadings

Dec. 21 - deadline for defendants to answer

Dec. 21 - deadline to exchange evidence (in the form of expert reports, fact witness affidavits)

Dec. 28 - deadline to exchange rebuttal evidence (in the form of rebuttal expert reports)

Dec. 31 - deadline to submit reply expert reports

Jan. 6 - deadline to submit proposed findings of fact and conclusions of law to the Court

Jan. 10 - court could schedule argument if it chooses

Jan. 11 - deadline for court's decision on the merits

As I mentioned, we would agree to mutual foregoing of expert depositions, but reserve the right to take fact witness depositions (which we would propose to do by Zoom). We might want to agree to a deadline to exchange the names of all potential fact witnesses to speed that process along.

From: Alyssa Riggins <alyssa.riggins@nelsonmullins.com>

Sent: Thursday, December 9, 2021 11:41 AM

To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Feldman, Stephen

<SFeldman@robinsonbradshaw.com>

Cc: Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <brcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

External E-mail

Hi Elisabeth,

Phil and Kate are available to speak with you at 3:00. Could you please circulate a meeting invitation and be sure to include them?

Best,
Alyssa

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Wednesday, December 8, 2021 6:10 PM
To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>
Cc: Phil Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; Imadduri@elias.law; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

◀External Email▶ - From: prvs=969f644b3=Elisabeth.Theodore@arnoldporter.com

Counsel:

In light of the court's order, we think it would be best to meet and confer tomorrow on the schedule. Are representatives from all parties available at 1pm or at 3pm?

Best,
Elisabeth

From: Rossi, Alison J. <Alison.J.Rossi@nccourts.org>
Sent: Wednesday, December 8, 2021 5:14 PM
To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>; Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>
Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; john.branch@nelsonmullins.com; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; zzz.External.Imadduri@elias.law <Imadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

External E-mail

Hello all,

Based on the Supreme Court's order, dated today, December 8, 2021, the court has asked that you provide a proposed scheduling order by Friday, December 10, 2021.

Best,

Alison J. Rossi
Judicial Fellow
North Carolina Judicial Branch
M 919-259-9917
D 919-890-1679
O 919-890-1670

From: Rossi, Alison J.

Sent: Monday, December 6, 2021 1:01 PM

To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>; Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>

Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>;

john.branch@nelsonmullins.com; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden

<MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rRaile@bakerlaw.com>;

Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov'

<tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith

<psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>;

'lmadduri@elias.law' <lmadduri@elias.law>; 'jshelly@elias.law' <jshelly@elias.law>; 'gwhite@elias.law'

<gwhite@elias.law>; 'akhanna@elias.law' <akhanna@elias.law>; Theodore, Elisabeth

<Elisabeth.Theodore@arnoldporter.com>; 'Jones, Stanton' <Stanton.Jones@arnoldporter.com>;

'sam.callahan@arnoldporter.com' <sam.callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>;

Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring

<JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja

R. <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

Hello all,

The court is requesting that the parties in the above captioned case submit a proposed scheduling order by next Tuesday, December 14th, 2021.

While this case and *Harper v. Hall* (21 CVS 500085) have been consolidated, I am sending this message separately to the parties in each case.

Best,

Alison J. Rossi
Judicial Fellow
North Carolina Judicial Branch
M 919-259-9917
D 919-890-1679
O 919-890-1670

From: Feldman, Stephen <SFeldman@robinsonbradshaw.com>

Sent: Friday, December 3, 2021 5:21 PM

To: Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>; Rossi, Alison J. <Alison.J.Rossi@nccourts.org>

Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>;

john.branch@nelsonmullins.com; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden

<MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; 'lmadduri@elias.law' <lmadduri@elias.law>; 'jshelly@elias.law' <jshelly@elias.law>; 'gwhite@elias.law' <gwhite@elias.law>; 'akhanna@elias.law' <akhanna@elias.law>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Jones, Stanton' <Stanton.Jones@arnoldporter.com>; 'sam.callahan@arnoldporter.com' <sam.callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>

Subject: NCLCV v Hall (21 CVS 15426) -- Notice of Appeal

Dear Ms. Myers and Ms. Rossi:

In *NCLCV v Hall*, attached please find a notice of appeal filed this afternoon. I have copied all counsel in the coordinated cases on this email.

Thank you again for your coordination of these matters. All the best.

Stephen D. Feldman

Pronouns: He/Him/His

Robinson Bradshaw
t : 919.239.2603
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601

sfeldman@robinsonbradshaw.com | [Bio](#)
[robinsonbradshaw.com](#)

This email may contain material that is CONFIDENTIAL, PRIVILEGED and/or ATTORNEY WORK PRODUCT for the sole use of the intended recipient. Any review, reliance, distribution or forwarding by others without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

E-mail correspondence to and from this address may be subject to the North Carolina public records laws and if so, may be disclosed.

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

Zachary C. Schauf

Jenner & Block LLP
1099 New York Avenue, N.W.
Suite 900, Washington, DC 20001-4412 | jenner.com
+1 202 637 6379 | TEL
+1 202 424 9309 | MOBILE
ZSchauf@jenner.com
[Download V-Card](#) | [View Biography](#)

CONFIDENTIALITY WARNING: This email may contain privileged or confidential information and is for the sole use of the intended recipient(s). Any unauthorized use or disclosure of this communication is prohibited. If you believe that you have received this email in error, please notify the sender immediately and delete it from your system.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

This email is intended only for the use of the party to which it is addressed and may contain information that is privileged, confidential, or protected by law. If you are not the intended recipient you are hereby notified that any dissemination, copying or distribution of this email or its contents is strictly prohibited. If you have received this message in error, please notify us immediately by replying to the message and deleting it from your computer.

Any tax advice in this email is for information purposes only. The content of this email is limited to the matters specifically addressed herein and may not contain a full description of all relevant facts or a complete analysis of all relevant issues or authorities.

Internet communications are not assured to be secure or clear of inaccuracies as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. Therefore, we do not accept responsibility for any errors or omissions that are present in this email, or any attachment, that have arisen as a result of e-mail transmission.

Exhibit 6

Alyssa Riggins

From: McKnight, Katherine L. <kmcknight@bakerlaw.com>
Sent: Tuesday, December 14, 2021 9:57 AM
To: Theodore, Elisabeth; Alyssa Riggins; 'Feldman, Stephen'
Cc: Phil Strach; Tom Farr; John Branch; Braden, E. Mark; Raile, Richard; 'Brennan, Stephanie'; 'Majmundar, Amar'; 'tsteed@ncdoj.gov'; 'Burton Craige'; 'Narendra Ghosh'; 'Paul Smith'; 'melias@elias.law'; 'abranh@elias.law'; 'lmadduri@elias.law'; 'jshelly@elias.law'; 'gwhite@elias.law'; 'akhanna@elias.law'; Jones, Stanton; Callahan, Sam; 'Doerr, Adam'; 'Zimmerman, Erik'; 'Hirsch, Sam'; 'Amunson, Jessica Ring'; 'Kali Bracey'; 'Schauf, Zachary C.'; 'Mittal, Urja R.'
Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production
Attachments: MemberResidenceAddressCombined.xlsx

Thanks for your e-mail, Elisabeth. Last Thursday we asked for Plaintiffs' source code data for Plaintiffs' PI expert reports and were told that Harper Plaintiffs would produce it with a protective order. We asked that it be produced by yesterday and Harper Plaintiffs agreed. Yesterday morning, we agreed to Plaintiffs' protective order with minor revision, and the requirement that Harper Plaintiffs seek a Court-ordered protective order after production, but Harper Plaintiffs have not yet produced their experts' PI source code. We ask for the courtesy of notice if Harper Plaintiffs have changed their position and no longer intend to produce their experts' PI source code. If we do not hear from you by 2pm today, we will need to seek Court assistance in resolving this dispute.

Zach, for NCLCV Plaintiffs, we understood you were waiting to see the Court's scheduling order to produce. Now that you have the scheduling order and see the Court's requirement for the production of expert source code, will you agree to produce Dr. Duchin's PI source code today? We ask that you confirm NCLCV Plaintiffs' position on producing Dr. Duchin's PI source code by 2pm today. We hope to come to an agreement on this issue but may need to seek Court assistance in resolving this dispute.

As for incumbent addresses, unlike Harper Plaintiffs' agreement to produce information by yesterday, we never promised production by Monday. We received Harper Plaintiffs' written request on Friday afternoon and relayed it that afternoon to Central Staff in the General Assembly. It bears noting that Central Staff are non-partisan staff of the legislative body. Central Staff let us know yesterday morning that your Friday afternoon request would be fulfilled within a few hours and we relayed that information to you noting that this was our belief of timing but that we could not estimate with further certainty. Regardless, attached please find the incumbent address list.

We look forward to your responses.

Kate

Katherine L. McKnight
Partner

BakerHostetler
Washington Square
1050 Connecticut Ave, N.W. | Suite 1100
Washington, DC 20036-5403
T +1.202.861.1618

kmcknight@bakerlaw.com
bakerlaw.com



From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Monday, December 13, 2021 11:59 PM
To: McKnight, Katherine L. <kmcknight@bakerlaw.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>
Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; Imadduri@elias.law; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production

Kate:

Thanks for your response. We too hope to avoid motion practice on the issue of the incumbent addresses, but it has now been 10 hours since you advised us that you hoped to send the addresses in “a few hours,” and 4 days since we requested these addresses. As you know, these addresses are essential to our expert analysis, and time is short. Please see the attached first set of interrogatories from the Harper plaintiffs to the legislative defendants, which formally request the incumbent addresses by 3pm tomorrow. We will move at that time if we do not hear from you sooner.

I note that we know that this information has already been compiled by the General Assembly based on public documents. The StatPack for the enacted Senate plan (https://www.ncleg.gov/Files/GIS/Plans_Main/Senate_2021/SL%202021-173%20Senate%20-%20StatPack%20Report.pdf) contains an “Incumbent District Report” analysis based on a file entitled “Residence Set: NC Senate - 9/20/2021.” The StatPack for the enacted House plan (https://www.ncleg.gov/Files/GIS/Plans_Main/House_2021/SL%202021-175%20House%20-%20StatPack%20Report.pdf) contains an “Incumbent District Report” analysis based on a file entitled “Residence Set: NC House - 10/01/2021.” And the StatPack for the congressional plan (https://www.ncleg.gov/Files/GIS/Plans_Main/Congress_2021/SL%202021-174%20Congress%20-%20StatPack%20Report.pdf) contains an “Incumbent District Report” analysis based on a file entitled “Residence Set: Congress - 9/22/2021.”

Thanks,
Elisabeth

Thank you,
Elisabeth

From: McKnight, Katherine L. <kmcknight@bakerlaw.com>
Sent: Monday, December 13, 2021 1:58 PM
To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>
Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh'

<nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production

External E-mail

Thanks for your e-mails, Elisabeth and Zach.

Legislative Defendants cannot agree to a protective order other than under the arrangement described below. Do Plaintiffs need an additional day or two to file a motion for protective order? We can work with Plaintiffs on that point.

Elisabeth, thank you for working to accommodate our request for backup material today. If the Court allows Plaintiffs to amend their expert reports, which, to be clear, we do not think is appropriate, we would expect to receive backup materials for those amended reports on the same date as those reports are served.

On incumbent addresses, I believe we will be able to send those in a few hours but I cannot estimate with any more certainty. Unfortunately, such a list is not “readily available,” as I understand, for the very reason you anticipated; we are trying to gather in list form all residential addresses as opposed to a list that includes P.O. box numbers and the like. Plaintiffs appear ready to “force the parties to engage in contested briefing” but we can assure you there is no dispute on these addresses. We are just waiting for them to be collected and put into list form for production.

Kate

Katherine L. McKnight
Partner

BakerHostetler
Washington Square
1050 Connecticut Ave, N.W. | Suite 1100
Washington, DC 20036-5403
T +1.202.861.1618

kmcknight@bakerlaw.com
bakerlaw.com



From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Sent: Monday, December 13, 2021 12:04 PM

To: McKnight, Katherine L. <kmcknight@bakerlaw.com>; Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>

Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>;

'abbranch@elias.law' <abbranch@elias.law>; Imadduri@elias.law; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production

Kate:

As you know, the Legislative Defendants agreed to the exact same protective order covering the exact same source code material in the *Common Cause* litigation, which was also litigation of “overriding public importance.” And when we raised the protective order issue on Thursday during our meet and confer in response to your request for our expert materials at the PI stage, Phil said that a protective order wouldn’t be a problem. It is standard practice to enter into protective orders covering source code, and this protective order allows you and your experts full access to and use of all relevant information for any case-related purpose. If you have any concerns about the content of the protective order, we would be happy to discuss.

We are trying to accommodate your request to receive this source code and other backup material as quickly as possible, even though the materials you’ve requested relate to PI stage reports after the PI has already been granted. Given the extreme time constraints under which we are all working, we cannot understand why you would force the parties to engage in contested briefing about a protective order that you previously agreed to in materially identical litigation. Please let us know if you will reconsider. We are happy to discuss on the phone.

Also, please let us know **what time today** you will be able to send the incumbent addresses, which we asked for on Thursday and which we are indisputably entitled to. We know from the *Common Cause* litigation that this information is readily available to the legislative leaders, and this information was also used to generate the “Statpacks” that are available on the General Assembly’s website. It is critical that we receive this information now for our opening expert reports. If we do not hear from you by 5pm, we will seek relief from the Court, as we did in *Common Cause*.

Best,
Elisabeth

From: McKnight, Katherine L. <kmcknight@bakerlaw.com>
Sent: Monday, December 13, 2021 8:23 AM
To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>
Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bCraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; zzz.External.Imadduri@elias.law <Imadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>
Subject: NCLCV v Hall (21 CVS 15426) -- source code production

External E-mail

Dear Elisabeth,

Thank you for your e-mail below. Regarding the discussion below about a protective order, we believe the data underlying Plaintiffs' expert reports—including the source code, the data fed into the code, and the output—presents a matter of overriding public importance in the context of this case. We therefore cannot agree to a protective order and submit that it is Plaintiffs' obligation to disclose the data supporting their expert analysis, and Plaintiffs' burden to procure a protective order from the Court.

We are all working on an incredibly condensed schedule and propose the following solution:

1. Without waiving their position, Legislative Defendants are amenable to agreeing to the attached version of the protective order (*see* attached redline proposing edit to substance of the Order) pending resolution of Plaintiffs' motion for protective order so that Plaintiffs may produce today what we requested, namely:
 - a. "copies of the source code, source data, input parameters (i.e., the exact model specifications and input parameters given to the computer programs to perform the simulations analysis), and all data outputted from those simulations (including reporting as well as shapefiles or block-assignment files for the simulated plans) for the analyses that formed the basis for the expert reports of Drs. Chen and Pegden in the Harper case. We also request the data and model parameters underlying Dr. Duchin's expert report in the NCLCV matter. Finally, we request the source code, source data, input parameters (as defined above), and output data (as defined above) used to generate the three "Optimized" Maps/Plans that the NCLCV Plaintiffs asked Dr. Duchin to assess and that they produced to the Court." (Request dated Thursday, Dec. 9.)
2. Plaintiffs agree to file a motion for protective order by Wednesday, December 15, 2021, at 5pm and Legislative Defendants will file their opposition brief by Friday, December 17, 2021, at 5pm. If Plaintiffs fail to file a motion for protective order by that date, Legislative Defendants will understand that Plaintiffs have waived any protective interest in the material and the agreed protective order will no longer bind the parties.
3. If the Court denies Plaintiffs' motion for protective order, then the agreed protective order will no longer bind the parties.
4. If the Court grants Plaintiffs' motion for protective order, then the agreed protective order will continue to bind the parties.

For NCLCV counsel, we do not know where NCLCV Plaintiffs stand in this discussion (and pardon me if I missed an e-mail) but if you believe Dr. Duchin's materials require a protective order we suggest the same framework for resolution.

Finally, we understand your request regarding incumbent addresses and are working to gather residential addresses for incumbents. We hope to update you later today as to status.

We are happy to join a call today if that would aid in resolving this issue.

Thank you all,

Kate

Katherine L. McKnight
Partner

BakerHostetler
Washington Square
1050 Connecticut Ave, N.W. | Suite 1100

Washington, DC 20036-5403
T +1.202.861.1618

kmcknight@bakerlaw.com
bakerlaw.com



From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Friday, December 10, 2021 1:13 PM
To: 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>
Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; McKnight, Katherine L. <kmcknight@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craig' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; 'Imadduri@elias.law' <ishelly@elias.law>; 'gwhite@elias.law' <gwhite@elias.law>; 'akhanna@elias.law' <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

[External Email: Use caution when clicking on links or opening attachments.]

Dear all:

Two updates from the Harper plaintiffs. First, in response to Kate's email yesterday requesting source code, the Harper Plaintiffs are happy to provide source code, inputs, and outputs from Dr. Chen and Dr. Pegden on Monday, on two conditions. First, will Defendants agree to enter into the attached protective order that we all agreed on in Common Cause? We'll update it for this case. Second, will defendants provide, by Monday, a list of the incumbent addresses for both congressional and state legislative districts that the Legislative Defendants used in drawing the maps? Consistent with the experience in the Common Cause case, we will need their home addresses, not P.O. boxes or office addresses. I should note that we do intend to serve updated expert reports, but we are nonetheless happy to send you on Monday the code from the versions we served with the preliminary injunction motion.

Second, on further consideration, we'd like to propose two days for expert video depositions, with a 4 hour cap (including 1 hour for direct) for each expert. We would submit the videos (or excerpts) to the judges.

Given that the deadline is today, please let us know your thoughts on scheduling. We are happy to jump on the phone again.

Best,
Elisabeth

From: Theodore, Elisabeth
Sent: Thursday, December 9, 2021 5:19 PM
To: 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; Feldman, Stephen <SFeldman@robinsonbradshaw.com>

Cc: Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rRaile@bakerlaw.com>; Brennan, Stephanie <SBrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

All:

Thanks for the discussion earlier today. As promised, our proposal is as follows, in general strokes. As we noted, our proposal is no live evidentiary hearing, and the court would make findings of fact and conclusions of law on the paper submissions. We added a few additional deadlines in addition to what we described on the call, and there may be need to be some other deadlines in there too, like for evidentiary objections. We also pushed back our proposal for a date for submission of proposed findings and conclusions to Jan. 6.

Dec. 15 - deadline to amend pleadings
Dec. 21 - deadline for defendants to answer
Dec. 21 - deadline to exchange evidence (in the form of expert reports, fact witness affidavits)
Dec. 28 - deadline to exchange rebuttal evidence (in the form of rebuttal expert reports)
Dec. 31 - deadline to submit reply expert reports
Jan. 6 - deadline to submit proposed findings of fact and conclusions of law to the Court
Jan. 10 - court could schedule argument if it chooses
Jan. 11 - deadline for court's decision on the merits

As I mentioned, we would agree to mutual foregoing of expert depositions, but reserve the right to take fact witness depositions (which we would propose to do by Zoom). We might want to agree to a deadline to exchange the names of all potential fact witnesses to speed that process along.

From: Alyssa Riggins <alyssa.riggins@nelsonmullins.com>
Sent: Thursday, December 9, 2021 11:41 AM
To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Feldman, Stephen <SFeldman@robinsonbradshaw.com>
Cc: Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rRaile@bakerlaw.com>; Brennan, Stephanie <SBrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf,

Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

External E-mail

Hi Elisabeth,

Phil and Kate are available to speak with you at 3:00. Could you please circulate a meeting invitation and be sure to include them?

Best,
Alyssa

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Wednesday, December 8, 2021 6:10 PM
To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>
Cc: Phil Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; Imadduri@elias.law; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauff, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

◀External Email▶ - From: prvs=969f644b3=Elisabeth.Theodore@arnoldporter.com

Counsel:

In light of the court's order, we think it would be best to meet and confer tomorrow on the schedule. Are representatives from all parties available at 1pm or at 3pm?

Best,
Elisabeth

From: Rossi, Alison J. <Alison.J.Rossi@nccourts.org>
Sent: Wednesday, December 8, 2021 5:14 PM
To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>; Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>
Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; zzz.External.Imadduri@elias.law <Imadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik

<EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

External E-mail

Hello all,

Based on the Supreme Court's order, dated today, December 8, 2021, the court has asked that you provide a proposed scheduling order by Friday, December 10, 2021.

Best,

Alison J. Rossi
Judicial Fellow
North Carolina Judicial Branch
M 919-259-9917
D 919-890-1679
O 919-890-1670

From: Rossi, Alison J.

Sent: Monday, December 6, 2021 1:01 PM

To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>; Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>

Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>;

john.branch@nelsonmullins.com; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>;

Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <brcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith

<psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranche@elias.law' <abranche@elias.law>; 'lmadduri@elias.law' <lmadduri@elias.law>; 'jshelly@elias.law' <jshelly@elias.law>; 'gwhite@elias.law'

<gwhite@elias.law>; 'akhanna@elias.law' <akhanna@elias.law>; Theodore, Elisabeth

<Elisabeth.Theodore@arnoldporter.com>; 'Jones, Stanton' <Stanton.Jones@arnoldporter.com>; 'sam.callahan@arnoldporter.com' <sam.callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>;

Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja

R. <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

Hello all,

The court is requesting that the parties in the above captioned case submit a proposed scheduling order by next Tuesday, December 14th, 2021.

While this case and *Harper v. Hall* (21 CVS 500085) have been consolidated, I am sending this message separately to the parties in each case.

Best,

Alison J. Rossi
Judicial Fellow
North Carolina Judicial Branch

M 919-259-9917
D 919-890-1679
O 919-890-1670

From: Feldman, Stephen <sfeldman@robinsonbradshaw.com>

Sent: Friday, December 3, 2021 5:21 PM

To: Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>; Rossi, Alison J. <Alison.J.Rossi@nccourts.org>

Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>;
john.branch@nelsonmullins.com; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden
<MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>;
Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov'
<tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith
<psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>;
'lmadduri@elias.law' <lmadduri@elias.law>; 'jshelly@elias.law' <jshelly@elias.law>; 'gwhite@elias.law'
<gwhite@elias.law>; 'akhanna@elias.law' <akhanna@elias.law>; Theodore, Elisabeth
<Elisabeth.Theodore@arnoldporter.com>; 'Jones, Stanton' <Stanton.Jones@arnoldporter.com>;
'sam.callahan@arnoldporter.com' <sam.callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>;
Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring
<JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja
R. <UMittal@jenner.com>

Subject: NCLCV v Hall (21 CVS 15426) -- Notice of Appeal

Dear Ms. Myers and Ms. Rossi:

In *NCLCV v Hall*, attached please find a notice of appeal filed this afternoon. I have copied all counsel in the coordinated cases on this email.

Thank you again for your coordination of these matters. All the best.

Stephen D. Feldman

Pronouns: He/Him/His

Robinson Bradshaw
t : 919.239.2603
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601

sfeldman@robinsonbradshaw.com | [Bio
robinsonbradshaw.com](https://www.robinsonbradshaw.com)

This email may contain material that is CONFIDENTIAL, PRIVILEGED and/or ATTORNEY WORK PRODUCT for the sole use of the intended recipient. Any review, reliance, distribution or forwarding by others without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

E-mail correspondence to and from this address may be subject to the North Carolina public records laws and if so, may be disclosed.

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of

it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

This email is intended only for the use of the party to which it is addressed and may contain information that is privileged, confidential, or protected by law. If you are not the intended recipient you are hereby notified that any dissemination, copying or distribution of this email or its contents is strictly prohibited. If you have received this message in error, please notify us immediately by replying to the message and deleting it from your computer.

Any tax advice in this email is for information purposes only. The content of this email is limited to the matters specifically addressed herein and may not contain a full description of all relevant facts or a complete analysis of all relevant issues or authorities.

Internet communications are not assured to be secure or clear of inaccuracies as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. Therefore, we do not accept responsibility for any errors or omissions that are present in this email, or any attachment, that have arisen as a result of e-mail transmission.

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

Exhibit 7

Alyssa Riggins

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Tuesday, December 14, 2021 12:21 PM
To: 'McKnight, Katherine L.'; Alyssa Riggins; 'Feldman, Stephen'
Cc: Phil Strach; Tom Farr; John Branch; Braden, E. Mark; Raile, Richard; 'Brennan, Stephanie'; 'Majmundar, Amar'; 'tsteed@ncdoj.gov'; 'Burton Craige'; 'Narendra Ghosh'; 'Paul Smith'; 'melias@elias.law'; 'abbranch@elias.law'; 'lmadduri@elias.law'; 'jshelly@elias.law'; 'gwhite@elias.law'; 'akhanna@elias.law'; Jones, Stanton; Callahan, Sam; 'Doerr, Adam'; 'Zimmerman, Erik'; 'Hirsch, Sam'; 'Amunson, Jessica Ring'; 'Kali Bracey'; 'Schauf, Zachary C.'; 'Mittal, Urja R.'
Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production

Kate:

Thank you very much for sending the incumbent addresses.

We understood the Court's order from yesterday to require us to produce expert materials with the reports on the 23rd. We will certainly honor our agreement — which was to voluntarily produce PI-related materials earlier *if* you agree to a protective order — but you told us yesterday that you wouldn't agree and would oppose such an order, which is why we didn't produce them yesterday. We have not changed our position, but we do not plan to voluntarily produce source code and other materials relating to PI-stage reports if there is any risk that those materials won't be subject to a protective order.

We intend to move the court, as early as today, for entry of the same protective order to which the parties agreed (and that the panel entered) in Common Cause. We did not understand your addition, which appears to allow parties to unilaterally designate as confidential information that has nothing to do with them and in which they have no protectable interest.

Of course, you retain the right to oppose entry of the order. If you oppose and the Court declines to enter our proposed protective order, we will produce all the expert materials that the Court's scheduling order requires us to produce, but we won't plan to voluntarily produce extra materials such as the PI materials absent a protective order.

Thanks,
Elisabeth

From: McKnight, Katherine L. <kmcknight@bakerlaw.com>
Sent: Tuesday, December 14, 2021 9:57 AM
To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>
Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring'

<JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production

External E-mail

Thanks for your e-mail, Elisabeth. Last Thursday we asked for Plaintiffs' source code data for Plaintiffs' PI expert reports and were told that Harper Plaintiffs would produce it with a protective order. We asked that it be produced by yesterday and Harper Plaintiffs agreed. Yesterday morning, we agreed to Plaintiffs' protective order with minor revision, and the requirement that Harper Plaintiffs seek a Court-ordered protective order after production, but Harper Plaintiffs have not yet produced their experts' PI source code. We ask for the courtesy of notice if Harper Plaintiffs have changed their position and no longer intend to produce their experts' PI source code. If we do not hear from you by 2pm today, we will need to seek Court assistance in resolving this dispute.

Zach, for NCLCV Plaintiffs, we understood you were waiting to see the Court's scheduling order to produce. Now that you have the scheduling order and see the Court's requirement for the production of expert source code, will you agree to produce Dr. Duchin's PI source code today? We ask that you confirm NCLCV Plaintiffs' position on producing Dr. Duchin's PI source code by 2pm today. We hope to come to an agreement on this issue but may need to seek Court assistance in resolving this dispute.

As for incumbent addresses, unlike Harper Plaintiffs' agreement to produce information by yesterday, we never promised production by Monday. We received Harper Plaintiffs' written request on Friday afternoon and relayed it that afternoon to Central Staff in the General Assembly. It bears noting that Central Staff are non-partisan staff of the legislative body. Central Staff let us know yesterday morning that your Friday afternoon request would be fulfilled within a few hours and we relayed that information to you noting that this was our belief of timing but that we could not estimate with further certainty. Regardless, attached please find the incumbent address list.

We look forward to your responses.

Kate

Katherine L. McKnight
Partner

BakerHostetler

Washington Square
1050 Connecticut Ave, N.W. | Suite 1100
Washington, DC 20036-5403
T +1.202.861.1618

kmcknight@bakerlaw.com
bakerlaw.com



From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Sent: Monday, December 13, 2021 11:59 PM

To: McKnight, Katherine L. <kmcknight@bakerlaw.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>

Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>;

'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; 'Imadduri@elias.law' <imadduri@elias.law>; 'jshelly@elias.law' <jshelly@elias.law>; 'gwhite@elias.law' <gwhite@elias.law>; 'akhanna@elias.law' <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production

Kate:

Thanks for your response. We too hope to avoid motion practice on the issue of the incumbent addresses, but it has now been 10 hours since you advised us that you hoped to send the addresses in “a few hours,” and 4 days since we requested these addresses. As you know, these addresses are essential to our expert analysis, and time is short. Please see the attached first set of interrogatories from the Harper plaintiffs to the legislative defendants, which formally request the incumbent addresses by 3pm tomorrow. We will move at that time if we do not hear from you sooner.

I note that we know that this information has already been compiled by the General Assembly based on public documents. The StatPack for the enacted Senate plan (https://www.ncleg.gov/Files/GIS/Plans_Main/Senate_2021/SL%202021-173%20Senate%20-%20StatPack%20Report.pdf) contains an “Incumbent District Report” analysis based on a file entitled “Residence Set: NC Senate - 9/20/2021.” The StatPack for the enacted House plan (https://www.ncleg.gov/Files/GIS/Plans_Main/House_2021/SL%202021-175%20House%20-%20StatPack%20Report.pdf) contains an “Incumbent District Report” analysis based on a file entitled “Residence Set: NC House - 10/01/2021.” And the StatPack for the congressional plan (https://www.ncleg.gov/Files/GIS/Plans_Main/Congress_2021/SL%202021-174%20Congress%20-%20StatPack%20Report.pdf) contains an “Incumbent District Report” analysis based on a file entitled “Residence Set: Congress - 9/22/2021.”

Thanks,
Elisabeth

Thank you,
Elisabeth

From: McKnight, Katherine L. <kmcknight@bakerlaw.com>

Sent: Monday, December 13, 2021 1:58 PM

To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>

Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; 'Imadduri@elias.law' <imadduri@elias.law>; 'jshelly@elias.law' <jshelly@elias.law>; 'gwhite@elias.law' <gwhite@elias.law>; 'akhanna@elias.law' <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production

External E-mail

Thanks for your e-mails, Elisabeth and Zach.

Legislative Defendants cannot agree to a protective order other than under the arrangement described below. Do Plaintiffs need an additional day or two to file a motion for protective order? We can work with Plaintiffs on that point.

Elisabeth, thank you for working to accommodate our request for backup material today. If the Court allows Plaintiffs to amend their expert reports, which, to be clear, we do not think is appropriate, we would expect to receive backup materials for those amended reports on the same date as those reports are served.

On incumbent addresses, I believe we will be able to send those in a few hours but I cannot estimate with any more certainty. Unfortunately, such a list is not “readily available,” as I understand, for the very reason you anticipated; we are trying to gather in list form all residential addresses as opposed to a list that includes P.O. box numbers and the like. Plaintiffs appear ready to “force the parties to engage in contested briefing” but we can assure you there is no dispute on these addresses. We are just waiting for them to be collected and put into list form for production.

Kate

Katherine L. McKnight
Partner

BakerHostetler

Washington Square
1050 Connecticut Ave, N.W. | Suite 1100
Washington, DC 20036-5403
T +1.202.861.1618

kmcknight@bakerlaw.com
bakerlaw.com



From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Sent: Monday, December 13, 2021 12:04 PM

To: McKnight, Katherine L. <kmcknight@bakerlaw.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>

Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; 'Imadduri@elias.law' <jshelly@elias.law>; 'gwhite@elias.law' <gwhite@elias.law>; 'akhanna@elias.law' <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production

Kate:

As you know, the Legislative Defendants agreed to the exact same protective order covering the exact same source code material in the *Common Cause* litigation, which was also litigation of “overriding public importance.” And when we raised the protective order issue on Thursday during our meet and confer in response to your request for our expert materials at the PI stage, Phil said that a protective order wouldn’t be a problem. It is standard practice to enter into protective orders covering source code, and this protective order allows you and your experts full access to and use of all relevant information for any case-related purpose. If you have any concerns about the content of the protective order, we would be happy to discuss.

We are trying to accommodate your request to receive this source code and other backup material as quickly as possible, even though the materials you’ve requested relate to PI stage reports after the PI has already been granted. Given the extreme time constraints under which we are all working, we cannot understand why you would force the parties to engage in contested briefing about a protective order that you previously agreed to in materially identical litigation. Please let us know if you will reconsider. We are happy to discuss on the phone.

Also, please let us know **what time today** you will be able to send the incumbent addresses, which we asked for on Thursday and which we are indisputably entitled to. We know from the *Common Cause* litigation that this information is readily available to the legislative leaders, and this information was also used to generate the “Statpacks” that are available on the General Assembly’s website. It is critical that we receive this information now for our opening expert reports. If we do not hear from you by 5pm, we will seek relief from the Court, as we did in *Common Cause*.

Best,
Elisabeth

From: McKnight, Katherine L. <kmcknight@bakerlaw.com>
Sent: Monday, December 13, 2021 8:23 AM
To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>
Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>
Subject: NCLCV v Hall (21 CVS 15426) -- source code production

External E-mail

Dear Elisabeth,

Thank you for your e-mail below. Regarding the discussion below about a protective order, we believe the data underlying Plaintiffs’ expert reports—including the source code, the data fed into the code, and the output—presents a matter of overriding public importance in the context of this case. We therefore cannot agree to a protective order and submit that it is Plaintiffs’ obligation to disclose the data supporting their expert analysis, and Plaintiffs’ burden to procure a protective order from the Court.

We are all working on an incredibly condensed schedule and propose the following solution:

1. Without waiving their position, Legislative Defendants are amenable to agreeing to the attached version of the protective order (see attached redline proposing edit to substance of the Order) pending resolution of Plaintiffs' motion for protective order so that Plaintiffs may produce today what we requested, namely:
 - a. "copies of the source code, source data, input parameters (i.e., the exact model specifications and input parameters given to the computer programs to perform the simulations analysis), and all data outputted from those simulations (including reporting as well as shapefiles or block-assignment files for the simulated plans) for the analyses that formed the basis for the expert reports of Drs. Chen and Pegden in the Harper case. We also request the data and model parameters underlying Dr. Duchin's expert report in the NCLCV matter. Finally, we request the source code, source data, input parameters (as defined above), and output data (as defined above) used to generate the three "Optimized" Maps/Plans that the NCLCV Plaintiffs asked Dr. Duchin to assess and that they produced to the Court." (Request dated Thursday, Dec. 9.)
2. Plaintiffs agree to file a motion for protective order by Wednesday, December 15, 2021, at 5pm and Legislative Defendants will file their opposition brief by Friday, December 17, 2021, at 5pm. If Plaintiffs fail to file a motion for protective order by that date, Legislative Defendants will understand that Plaintiffs have waived any protective interest in the material and the agreed protective order will no longer bind the parties.
3. If the Court denies Plaintiffs' motion for protective order, then the agreed protective order will no longer bind the parties.
4. If the Court grants Plaintiffs' motion for protective order, then the agreed protective order will continue to bind the parties.

For NCLCV counsel, we do not know where NCLCV Plaintiffs stand in this discussion (and pardon me if I missed an e-mail) but if you believe Dr. Duchin's materials require a protective order we suggest the same framework for resolution.

Finally, we understand your request regarding incumbent addresses and are working to gather residential addresses for incumbents. We hope to update you later today as to status.

We are happy to join a call today if that would aid in resolving this issue.

Thank you all,

Kate

Katherine L. McKnight
Partner

BakerHostetler
Washington Square
1050 Connecticut Ave, N.W. | Suite 1100
Washington, DC 20036-5403
T +1.202.861.1618

kmcknight@bakerlaw.com
bakerlaw.com



From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Sent: Friday, December 10, 2021 1:13 PM

To: 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>

Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; McKnight, Katherine L. <kmcknight@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>;

'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>;

'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; 'Imadduri@elias.law' <imadduri@elias.law>; 'jshelly@elias.law' <jshelly@elias.law>; 'gwhite@elias.law' <gwhite@elias.law>; 'akhanna@elias.law' <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

[External Email: Use caution when clicking on links or opening attachments.]

Dear all:

Two updates from the Harper plaintiffs. First, in response to Kate's email yesterday requesting source code, the Harper Plaintiffs are happy to provide source code, inputs, and outputs from Dr. Chen and Dr. Pegden on Monday, on two conditions. First, will Defendants agree to enter into the attached protective order that we all agreed on in Common Cause? We'll update it for this case. Second, will defendants provide, by Monday, a list of the incumbent addresses for both congressional and state legislative districts that the Legislative Defendants used in drawing the maps? Consistent with the experience in the Common Cause case, we will need their home addresses, not P.O. boxes or office addresses. I should note that we do intend to serve updated expert reports, but we are nonetheless happy to send you on Monday the code from the versions we served with the preliminary injunction motion.

Second, on further consideration, we'd like to propose two days for expert video depositions, with a 4 hour cap (including 1 hour for direct) for each expert. We would submit the videos (or excerpts) to the judges.

Given that the deadline is today, please let us know your thoughts on scheduling. We are happy to jump on the phone again.

Best,
Elisabeth

From: Theodore, Elisabeth

Sent: Thursday, December 9, 2021 5:19 PM

To: 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; Feldman, Stephen <SFeldman@robinsonbradshaw.com>

Cc: Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>;

Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>;

'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; zzz.External.Imadduri@elias.law <imadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam

<ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

All:

Thanks for the discussion earlier today. As promised, our proposal is as follows, in general strokes. As we noted, our proposal is no live evidentiary hearing, and the court would make findings of fact and conclusions of law on the paper submissions. We added a few additional deadlines in addition to what we described on the call, and there may be need to be some other deadlines in there too, like for evidentiary objections. We also pushed back our proposal for a date for submission of proposed findings and conclusions to Jan. 6.

Dec. 15 - deadline to amend pleadings
Dec. 21 - deadline for defendants to answer
Dec. 21 - deadline to exchange evidence (in the form of expert reports, fact witness affidavits)
Dec. 28 - deadline to exchange rebuttal evidence (in the form of rebuttal expert reports)
Dec. 31 - deadline to submit reply expert reports
Jan. 6 - deadline to submit proposed findings of fact and conclusions of law to the Court
Jan. 10 - court could schedule argument if it chooses
Jan. 11 - deadline for court's decision on the merits

As I mentioned, we would agree to mutual foregoing of expert depositions, but reserve the right to take fact witness depositions (which we would propose to do by Zoom). We might want to agree to a deadline to exchange the names of all potential fact witnesses to speed that process along.

From: Alyssa Riggins <alyssa.riggins@nelsonmullins.com>
Sent: Thursday, December 9, 2021 11:41 AM
To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Feldman, Stephen <SFeldman@robinsonbradshaw.com>
Cc: Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rRaile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abran@elias.law' <abran@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

External E-mail

Hi Elisabeth,

Phil and Kate are available to speak with you at 3:00. Could you please circulate a meeting invitation and be sure to include them?

Best,
Alyssa

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Wednesday, December 8, 2021 6:10 PM
To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>
Cc: Phil Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; Imadduri@elias.law; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

◀External Email▶ - From: prvs=969f644b3=Elisabeth.Theodore@arnoldporter.com

Counsel:

In light of the court's order, we think it would be best to meet and confer tomorrow on the schedule. Are representatives from all parties available at 1pm or at 3pm?

Best,
Elisabeth

From: Rossi, Alison J. <Alison.J.Rossi@nccourts.org>
Sent: Wednesday, December 8, 2021 5:14 PM
To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>; Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>
Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; john.branch@nelsonmullins.com; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; zzz.External.Imadduri@elias.law <Imadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

External E-mail

Hello all,

Based on the Supreme Court's order, dated today, December 8, 2021, the court has asked that you provide a proposed scheduling order by Friday, December 10, 2021.

Best,

Alison J. Rossi
Judicial Fellow
North Carolina Judicial Branch
M 919-259-9917
D 919-890-1679
O 919-890-1670

From: Rossi, Alison J.

Sent: Monday, December 6, 2021 1:01 PM

To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>; Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>

Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>;
john.branch@nelsonmullins.com; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden
<MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rRaile@bakerlaw.com>;
Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov'
<tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith
<psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>;
'Imadduri@elias.law' <Imadduri@elias.law>; 'jshelly@elias.law' <jshelly@elias.law>; 'gwhite@elias.law'
<gwhite@elias.law>; 'akhanna@elias.law' <akhanna@elias.law>; Theodore, Elisabeth
<Elisabeth.Theodore@arnoldporter.com>; 'Jones, Stanton' <Stanton.Jones@arnoldporter.com>;
'sam.callahan@arnoldporter.com' <sam.callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>;
Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring
<JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja
R. <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

Hello all,

The court is requesting that the parties in the above captioned case submit a proposed scheduling order by next Tuesday, December 14th, 2021.

While this case and *Harper v. Hall* (21 CVS 500085) have been consolidated, I am sending this message separately to the parties in each case.

Best,

Alison J. Rossi
Judicial Fellow
North Carolina Judicial Branch
M 919-259-9917
D 919-890-1679
O 919-890-1670

From: Feldman, Stephen <SFeldman@robinsonbradshaw.com>

Sent: Friday, December 3, 2021 5:21 PM

To: Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>; Rossi, Alison J. <Alison.J.Rossi@nccourts.org>

Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>;
john.branch@nelsonmullins.com; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden

<MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; 'lmadduri@elias.law' <lmadduri@elias.law>; 'jshelly@elias.law' <jshelly@elias.law>; 'gwhite@elias.law' <gwhite@elias.law>; 'akhanna@elias.law' <akhanna@elias.law>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Jones, Stanton' <Stanton.Jones@arnoldporter.com>; 'sam.callahan@arnoldporter.com' <sam.callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>

Subject: NCLCV v Hall (21 CVS 15426) -- Notice of Appeal

Dear Ms. Myers and Ms. Rossi:

In *NCLCV v Hall*, attached please find a notice of appeal filed this afternoon. I have copied all counsel in the coordinated cases on this email.

Thank you again for your coordination of these matters. All the best.

Stephen D. Feldman

Pronouns: He/Him/His

Robinson Bradshaw
t : 919.239.2603
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601

sfeldman@robinsonbradshaw.com | [Bio](#)
robinsonbradshaw.com

This email may contain material that is CONFIDENTIAL, PRIVILEGED and/or ATTORNEY WORK PRODUCT for the sole use of the intended recipient. Any review, reliance, distribution or forwarding by others without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

E-mail correspondence to and from this address may be subject to the North Carolina public records laws and if so, may be disclosed.

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

This email is intended only for the use of the party to which it is addressed and may contain information that is privileged, confidential, or protected by law. If you are not the intended recipient you are hereby notified that any dissemination, copying or distribution of this email or its contents is strictly prohibited. If you have received this message in error, please notify us immediately by replying to the message and deleting it from your computer.

Any tax advice in this email is for information purposes only. The content of this email is limited to the matters specifically addressed herein and may not contain a full description of all relevant facts or a complete analysis of all relevant issues or authorities.

Internet communications are not assured to be secure or clear of inaccuracies as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. Therefore, we do not accept responsibility for any errors or omissions that are present in this email, or any attachment, that have arisen as a result of e-mail transmission.

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

Exhibit 8

Alyssa Riggins

From: Schauf, Zachary C. <ZSchauf@jenner.com>
Sent: Tuesday, December 14, 2021 1:25 PM
To: Theodore, Elisabeth; 'McKnight, Katherine L.'; Alyssa Riggins; 'Feldman, Stephen'
Cc: Phil Strach; Tom Farr; John Branch; Braden, E. Mark; Raile, Richard; 'Brennan, Stephanie'; 'Majmundar, Amar'; 'tsteed@ncdoj.gov'; 'Burton Craige'; 'Narendra Ghosh'; 'Paul Smith'; 'melias@elias.law'; 'abbranch@elias.law'; 'lmadduri@elias.law'; 'jshelly@elias.law'; 'gwhite@elias.law'; 'akhanna@elias.law'; Jones, Stanton; Callahan, Sam; 'Doerr, Adam'; 'Zimmerman, Erik'; Hirsch, Sam; Amunson, Jessica Ring; Bracey, Kali N.; Mittal, Urja R.
Subject: Re: NCLCV v Hall (21 CVS 15426) -- source code production

Kate:

From the NCLCV Plaintiffs' perspective, we were indeed waiting for the Court's scheduling order to see what it said. The scheduling order provides that expert reports "produced to an opposition party" under the order "shall be accompanied by" appropriate disclosures concerning the analysis the expert conducted. Consistent with the order, we intend to make appropriate disclosures when we produce a report on or before December 23.

Regards,

Zach

Zachary C. Schauf

Jenner & Block LLP
1099 New York Avenue, N.W.
Suite 900, Washington, DC 20001-4412 | jenner.com
+1 202 637 6379 | TEL
+1 202 424 9309 | MOBILE
ZSchauf@jenner.com
[Download V-Card](#) | [View Biography](#)

CONFIDENTIALITY WARNING: This email may contain privileged or confidential information and is for the sole use of the intended recipient(s). Any unauthorized use or disclosure of this communication is prohibited. If you believe that you have received this email in error, please notify the sender immediately and delete it from your system.

From: "Theodore, Elisabeth" <Elisabeth.Theodore@arnoldporter.com>
Date: Tuesday, December 14, 2021 at 12:21 PM
To: "'McKnight, Katherine L.'" <kmcknight@bakerlaw.com>, 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>, "'Feldman, Stephen'" <SFeldman@robinsonbradshaw.com>
Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>, 'Tom Farr' <tom.farr@nelsonmullins.com>, 'John Branch' <john.branch@nelsonmullins.com>, "Braden, E. Mark" <MBraden@bakerlaw.com>, "Raile, Richard" <rRaile@bakerlaw.com>, "Brennan, Stephanie" <SBrennan@ncdoj.gov>, "Majmundar, Amar" <amajmundar@ncdoj.gov>, "tsteed@ncdoj.gov" <tsteed@ncdoj.gov>, 'Burton Craige' <bcraige@pathlaw.com>, 'Narendra Ghosh' <nghosh@pathlaw.com>, 'Paul Smith' <psmith@pathlaw.com>, "melias@elias.law" <melias@elias.law>, "abbranch@elias.law" <abbranch@elias.law>, "lmadduri@elias.law" <lmadduri@elias.law>, "jshelly@elias.law" <jshelly@elias.law>, "gwhite@elias.law" <gwhite@elias.law>, "akhanna@elias.law" <akhanna@elias.law>, "Jones, Stanton" <Stanton.Jones@arnoldporter.com>, "Callahan, Sam" <Sam.Callahan@arnoldporter.com>, "Doerr, Adam" <ADoerr@robinsonbradshaw.com>, "Zimmerman,

Erik'" <EZimmerman@robinsonbradshaw.com>, "Hirsch, Sam" <SHirsch@jenner.com>, "Amunson, Jessica Ring" <JAmunson@jenner.com>, "Bracey, Kali N." <KBracey@jenner.com>, "Schauf, Zachary C." <ZSchauf@jenner.com>, "Mittal, Urja R." <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production

External Email – Exercise Caution
Kate:

Thank you very much for sending the incumbent addresses.

We understood the Court's order from yesterday to require us to produce expert materials with the reports on the 23rd. We will certainly honor our agreement — which was to voluntarily produce PI-related materials earlier *if* you agree to a protective order — but you told us yesterday that you wouldn't agree and would oppose such an order, which is why we didn't produce them yesterday. We have not changed our position, but we do not plan to voluntarily produce source code and other materials relating to PI-stage reports if there is any risk that those materials won't be subject to a protective order.

We intend to move the court, as early as today, for entry of the same protective order to which the parties agreed (and that the panel entered) in Common Cause. We did not understand your addition, which appears to allow parties to unilaterally designate as confidential information that has nothing to do with them and in which they have no protectable interest.

Of course, you retain the right to oppose entry of the order. If you oppose and the Court declines to enter our proposed protective order, we will produce all the expert materials that the Court's scheduling order requires us to produce, but we won't plan to voluntarily produce extra materials such as the PI materials absent a protective order.

Thanks,
Elisabeth

From: McKnight, Katherine L. <kmcknight@bakerlaw.com>
Sent: Tuesday, December 14, 2021 9:57 AM
To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>
Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production

External E-mail

Thanks for your e-mail, Elisabeth. Last Thursday we asked for Plaintiffs' source code data for Plaintiffs' PI expert reports and were told that Harper Plaintiffs would produce it with a protective order. We asked that it be produced by yesterday and Harper Plaintiffs agreed. Yesterday morning, we agreed to Plaintiffs' protective order with minor revision,

and the requirement that Harper Plaintiffs seek a Court-ordered protective order after production, but Harper Plaintiffs have not yet produced their experts' PI source code. We ask for the courtesy of notice if Harper Plaintiffs have changed their position and no longer intend to produce their experts' PI source code. If we do not hear from you by 2pm today, we will need to seek Court assistance in resolving this dispute.

Zach, for NCLCV Plaintiffs, we understood you were waiting to see the Court's scheduling order to produce. Now that you have the scheduling order and see the Court's requirement for the production of expert source code, will you agree to produce Dr. Duchin's PI source code today? We ask that you confirm NCLCV Plaintiffs' position on producing Dr. Duchin's PI source code by 2pm today. We hope to come to an agreement on this issue but may need to seek Court assistance in resolving this dispute.

As for incumbent addresses, unlike Harper Plaintiffs' agreement to produce information by yesterday, we never promised production by Monday. We received Harper Plaintiffs' written request on Friday afternoon and relayed it that afternoon to Central Staff in the General Assembly. It bears noting that Central Staff are non-partisan staff of the legislative body. Central Staff let us know yesterday morning that your Friday afternoon request would be fulfilled within a few hours and we relayed that information to you noting that this was our belief of timing but that we could not estimate with further certainty. Regardless, attached please find the incumbent address list.

We look forward to your responses.

Kate

Katherine L. McKnight
Partner

BakerHostetler

Washington Square
1050 Connecticut Ave, N.W. | Suite 1100
Washington, DC 20036-5403
T +1.202.861.1618

kmcknight@bakerlaw.com
bakerlaw.com



From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Sent: Monday, December 13, 2021 11:59 PM

To: McKnight, Katherine L. <kmcknight@bakerlaw.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>

Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; 'Imadduri@elias.law' <jshelly@elias.law>; 'gwhite@elias.law' <gwhite@elias.law>; 'akhanna@elias.law' <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADOerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production

Kate:

Thanks for your response. We too hope to avoid motion practice on the issue of the incumbent addresses, but it has now been 10 hours since you advised us that you hoped to send the addresses in “a few hours,” and 4 days since we requested these addresses. As you know, these addresses are essential to our expert analysis, and time is short. Please see the attached first set of interrogatories from the Harper plaintiffs to the legislative defendants, which formally request the incumbent addresses by 3pm tomorrow. We will move at that time if we do not hear from you sooner.

I note that we know that this information has already been compiled by the General Assembly based on public documents. The StatPack for the enacted Senate plan (https://www.ncleg.gov/Files/GIS/Plans_Main/Senate_2021/SL%202021-173%20Senate%20-%20StatPack%20Report.pdf) contains an “Incumbent District Report” analysis based on a file entitled “Residence Set: NC Senate - 9/20/2021.” The StatPack for the enacted House plan (https://www.ncleg.gov/Files/GIS/Plans_Main/House_2021/SL%202021-175%20House%20-%20StatPack%20Report.pdf) contains an “Incumbent District Report” analysis based on a file entitled “Residence Set: NC House - 10/01/2021.” And the StatPack for the congressional plan (https://www.ncleg.gov/Files/GIS/Plans_Main/Congress_2021/SL%202021-174%20Congress%20-%20StatPack%20Report.pdf) contains an “Incumbent District Report” analysis based on a file entitled “Residence Set: Congress - 9/22/2021.”

Thanks,
Elisabeth

Thank you,
Elisabeth

From: McKnight, Katherine L. <kmcknight@bakerlaw.com>
Sent: Monday, December 13, 2021 1:58 PM
To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>
Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production

External E-mail

Thanks for your e-mails, Elisabeth and Zach.

Legislative Defendants cannot agree to a protective order other than under the arrangement described below. Do Plaintiffs need an additional day or two to file a motion for protective order? We can work with Plaintiffs on that point.

Elisabeth, thank you for working to accommodate our request for backup material today. If the Court allows Plaintiffs to amend their expert reports, which, to be clear, we do not think is appropriate, we would expect to receive backup materials for those amended reports on the same date as those reports are served.

On incumbent addresses, I believe we will be able to send those in a few hours but I cannot estimate with any more certainty. Unfortunately, such a list is not “readily available,” as I understand, for the very reason you anticipated; we are trying to gather in list form all residential addresses as opposed to a list that includes P.O. box numbers and the like. Plaintiffs appear ready to “force the parties to engage in contested briefing” but we can assure you there is no dispute on these addresses. We are just waiting for them to be collected and put into list form for production.

Kate

Katherine L. McKnight
Partner

BakerHostetler

Washington Square
1050 Connecticut Ave, N.W. | Suite 1100
Washington, DC 20036-5403
T +1.202.861.1618

kmcknight@bakerlaw.com
bakerlaw.com



From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Sent: Monday, December 13, 2021 12:04 PM

To: McKnight, Katherine L. <kmcknight@bakerlaw.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>

Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; 'Imadduri@elias.law' <imadduri@elias.law>; 'jshelly@elias.law' <jshelly@elias.law>; 'gwhite@elias.law' <gwhite@elias.law>; 'akhanna@elias.law' <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADOerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- source code production

Kate:

As you know, the Legislative Defendants agreed to the exact same protective order covering the exact same source code material in the *Common Cause* litigation, which was also litigation of “overriding public importance.” And when we raised the protective order issue on Thursday during our meet and confer in response to your request for our expert materials at the PI stage, Phil said that a protective order wouldn’t be a problem. It is standard practice to enter into protective orders covering source code, and this protective order allows you and your experts full access to and use of all relevant information for any case-related purpose. If you have any concerns about the content of the protective order, we would be happy to discuss.

We are trying to accommodate your request to receive this source code and other backup material as quickly as possible, even though the materials you've requested relate to PI stage reports after the PI has already been granted. Given the extreme time constraints under which we are all working, we cannot understand why you would force the parties to engage in contested briefing about a protective order that you previously agreed to in materially identical litigation. Please let us know if you will reconsider. We are happy to discuss on the phone.

Also, please let us know **what time today** you will be able to send the incumbent addresses, which we asked for on Thursday and which we are indisputably entitled to. We know from the *Common Cause* litigation that this information is readily available to the legislative leaders, and this information was also used to generate the "Statpacks" that are available on the General Assembly's website. It is critical that we receive this information now for our opening expert reports. If we do not hear from you by 5pm, we will seek relief from the Court, as we did in *Common Cause*.

Best,
Elisabeth

From: McKnight, Katherine L. <kmcknight@bakerlaw.com>
Sent: Monday, December 13, 2021 8:23 AM
To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>
Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcaige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Brace' <KBrace@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>
Subject: NCLCV v Hall (21 CVS 15426) -- source code production

External E-mail

Dear Elisabeth,

Thank you for your e-mail below. Regarding the discussion below about a protective order, we believe the data underlying Plaintiffs' expert reports—including the source code, the data fed into the code, and the output—presents a matter of overriding public importance in the context of this case. We therefore cannot agree to a protective order and submit that it is Plaintiffs' obligation to disclose the data supporting their expert analysis, and Plaintiffs' burden to procure a protective order from the Court.

We are all working on an incredibly condensed schedule and propose the following solution:

1. Without waiving their position, Legislative Defendants are amenable to agreeing to the attached version of the protective order (see attached redline proposing edit to substance of the Order) pending resolution of Plaintiffs' motion for protective order so that Plaintiffs may produce **today** what we requested, namely:
 - a. "copies of the source code, source data, input parameters (i.e., the exact model specifications and input parameters given to the computer programs to perform the simulations analysis), and all data outputted from those simulations (including reporting as well as shapefiles or block-assignment files for the

simulated plans) for the analyses that formed the basis for the expert reports of Drs. Chen and Pegden in the Harper case. We also request the data and model parameters underlying Dr. Duchin's expert report in the NCLCV matter. Finally, we request the source code, source data, input parameters (as defined above), and output data (as defined above) used to generate the three "Optimized" Maps/Plans that the NCLCV Plaintiffs asked Dr. Duchin to assess and that they produced to the Court." (Request dated Thursday, Dec. 9.)

2. Plaintiffs agree to file a motion for protective order by Wednesday, December 15, 2021, at 5pm and Legislative Defendants will file their opposition brief by Friday, December 17, 2021, at 5pm. If Plaintiffs fail to file a motion for protective order by that date, Legislative Defendants will understand that Plaintiffs have waived any protective interest in the material and the agreed protective order will no longer bind the parties.
3. If the Court denies Plaintiffs' motion for protective order, then the agreed protective order will no longer bind the parties.
4. If the Court grants Plaintiffs' motion for protective order, then the agreed protective order will continue to bind the parties.

For NCLCV counsel, we do not know where NCLCV Plaintiffs stand in this discussion (and pardon me if I missed an e-mail) but if you believe Dr. Duchin's materials require a protective order we suggest the same framework for resolution.

Finally, we understand your request regarding incumbent addresses and are working to gather residential addresses for incumbents. We hope to update you later today as to status.

We are happy to join a call today if that would aid in resolving this issue.

Thank you all,

Kate

Katherine L. McKnight
Partner

BakerHostetler

Washington Square
1050 Connecticut Ave, N.W. | Suite 1100
Washington, DC 20036-5403
T +1.202.861.1618

kmcknight@bakerlaw.com
bakerlaw.com



From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Sent: Friday, December 10, 2021 1:13 PM

To: 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>

Cc: 'Phil Strach' <phil.strach@nelsonmullins.com>; 'Tom Farr' <tom.farr@nelsonmullins.com>; 'John Branch' <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; McKnight, Katherine L. <kmcknight@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige'

<brcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; lmadduri@elias.law; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

[External Email: Use caution when clicking on links or opening attachments.]

Dear all:

Two updates from the Harper plaintiffs. First, in response to Kate's email yesterday requesting source code, the Harper Plaintiffs are happy to provide source code, inputs, and outputs from Dr. Chen and Dr. Pegden on Monday, on two conditions. First, will Defendants agree to enter into the attached protective order that we all agreed on in Common Cause? We'll update it for this case. Second, will defendants provide, by Monday, a list of the incumbent addresses for both congressional and state legislative districts that the Legislative Defendants used in drawing the maps? Consistent with the experience in the Common Cause case, we will need their home addresses, not P.O. boxes or office addresses. I should note that we do intend to serve updated expert reports, but we are nonetheless happy to send you on Monday the code from the versions we served with the preliminary injunction motion.

Second, on further consideration, we'd like to propose two days for expert video depositions, with a 4 hour cap (including 1 hour for direct) for each expert. We would submit the videos (or excerpts) to the judges.

Given that the deadline is today, please let us know your thoughts on scheduling. We are happy to jump on the phone again.

Best,
Elisabeth

From: Theodore, Elisabeth

Sent: Thursday, December 9, 2021 5:19 PM

To: 'Alyssa Riggins' <alyssa.riggins@nelsonmullins.com>; Feldman, Stephen <SFeldman@robinsonbradshaw.com>

Cc: Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rRaile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige

<brcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; zzz.External.lmadduri@elias.law

<lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton

<Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam'

<SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

All:

Thanks for the discussion earlier today. As promised, our proposal is as follows, in general strokes. As we noted, our proposal is no live evidentiary hearing, and the court would make findings of fact and conclusions of law on the paper submissions. We added a few additional deadlines in addition to what we described on the call, and there may be need to be some other deadlines in there too, like for evidentiary objections. We also pushed back our proposal for a date for submission of proposed findings and conclusions to Jan. 6.

Dec. 15 - deadline to amend pleadings
Dec. 21 - deadline for defendants to answer
Dec. 21 - deadline to exchange evidence (in the form of expert reports, fact witness affidavits)
Dec. 28 - deadline to exchange rebuttal evidence (in the form of rebuttal expert reports)
Dec. 31 - deadline to submit reply expert reports
Jan. 6 - deadline to submit proposed findings of fact and conclusions of law to the Court
Jan. 10 - court could schedule argument if it chooses
Jan. 11 - deadline for court's decision on the merits

As I mentioned, we would agree to mutual foregoing of expert depositions, but reserve the right to take fact witness depositions (which we would propose to do by Zoom). We might want to agree to a deadline to exchange the names of all potential fact witnesses to speed that process along.

From: Alyssa Riggins <alyssa.riggins@nelsonmullins.com>
Sent: Thursday, December 9, 2021 11:41 AM
To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Feldman, Stephen <SFeldman@robinsonbradshaw.com>
Cc: Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranche@elias.law' <abranche@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

External E-mail

Hi Elisabeth,

Phil and Kate are available to speak with you at 3:00. Could you please circulate a meeting invitation and be sure to include them?

Best,
Alyssa

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Wednesday, December 8, 2021 6:10 PM
To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>
Cc: Phil Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch

<john.branch@nelsonmullins.com>; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; Imadduri@elias.law; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

◀External Email▶ - From: prvs=969f644b3=Elisabeth.Theodore@arnoldporter.com

Counsel:

In light of the court's order, we think it would be best to meet and confer tomorrow on the schedule. Are representatives from all parties available at 1pm or at 3pm?

Best,
Elisabeth

From: Rossi, Alison J. <Alison.J.Rossi@nccourts.org>

Sent: Wednesday, December 8, 2021 5:14 PM

To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>; Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>

Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; john.branch@nelsonmullins.com; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; zzz.External.Imadduri@elias.law <Imadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

External E-mail

Hello all,

Based on the Supreme Court's order, dated today, December 8, 2021, the court has asked that you provide a proposed scheduling order by Friday, December 10, 2021.

Best,

Alison J. Rossi
Judicial Fellow
North Carolina Judicial Branch

M 919-259-9917
D 919-890-1679
O 919-890-1670

From: Rossi, Alison J.

Sent: Monday, December 6, 2021 1:01 PM

To: Feldman, Stephen <SFeldman@robinsonbradshaw.com>; Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>

Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; john.branch@nelsonmullins.com; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; 'lmadduri@elias.law' <lmadduri@elias.law>; 'jshelly@elias.law' <jshelly@elias.law>; 'gwhite@elias.law' <gwhite@elias.law>; 'akhanna@elias.law' <akhanna@elias.law>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Jones, Stanton' <Stanton.Jones@arnoldporter.com>; 'sam.callahan@arnoldporter.com' <sam.callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Scheduling order

Hello all,

The court is requesting that the parties in the above captioned case submit a proposed scheduling order by next Tuesday, December 14th, 2021.

While this case and *Harper v. Hall* (21 CVS 500085) have been consolidated, I am sending this message separately to the parties in each case.

Best,

Alison J. Rossi
Judicial Fellow
North Carolina Judicial Branch
M 919-259-9917
D 919-890-1679
O 919-890-1670

From: Feldman, Stephen <SFeldman@robinsonbradshaw.com>

Sent: Friday, December 3, 2021 5:21 PM

To: Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>; Rossi, Alison J. <Alison.J.Rossi@nccourts.org>

Cc: Phillip Strach <Phillip.Strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; john.branch@nelsonmullins.com; Alyssa Riggins <Alyssa.Riggins@nelsonmullins.com>; Mark Braden <MBraden@bakerlaw.com>; Katherine McKnight <kmcknight@bakerlaw.com>; Richard Raile <rraile@bakerlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Paul Smith <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranh@elias.law' <abranh@elias.law>; 'lmadduri@elias.law' <lmadduri@elias.law>; 'jshelly@elias.law' <jshelly@elias.law>; 'gwhite@elias.law' <gwhite@elias.law>; 'akhanna@elias.law' <akhanna@elias.law>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Jones, Stanton' <Stanton.Jones@arnoldporter.com>; 'sam.callahan@arnoldporter.com' <sam.callahan@arnoldporter.com>; Doerr, Adam <ADoerr@robinsonbradshaw.com>; Zimmerman, Erik <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; Amunson, Jessica Ring

<JAmunson@jenner.com>; Kali Bracey <KBracey@jenner.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>

Subject: NCLCV v Hall (21 CVS 15426) -- Notice of Appeal

Dear Ms. Myers and Ms. Rossi:

In *NCLCV v Hall*, attached please find a notice of appeal filed this afternoon. I have copied all counsel in the coordinated cases on this email.

Thank you again for your coordination of these matters. All the best.

Stephen D. Feldman

Pronouns: He/Him/His

Robinson Bradshaw
t : 919.239.2603
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601

sfeldman@robinsonbradshaw.com | [Bio](http://robinsonbradshaw.com)
robinsonbradshaw.com

This email may contain material that is CONFIDENTIAL, PRIVILEGED and/or ATTORNEY WORK PRODUCT for the sole use of the intended recipient. Any review, reliance, distribution or forwarding by others without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

E-mail correspondence to and from this address may be subject to the North Carolina public records laws and if so, may be disclosed.

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

This email is intended only for the use of the party to which it is addressed and may contain information that is privileged, confidential, or protected by law. If you are not the intended recipient you are hereby notified that any dissemination, copying or distribution of this email or its contents is strictly prohibited. If you have received this message in error, please notify us immediately by replying to the message and deleting it from your computer.

Any tax advice in this email is for information purposes only. The content of this email is limited to the matters specifically addressed herein and may not contain a full description of all relevant facts or a

complete analysis of all relevant issues or authorities.

Internet communications are not assured to be secure or clear of inaccuracies as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. Therefore, we do not accept responsibility for any errors or omissions that are present in this email, or any attachment, that have arisen as a result of e-mail transmission.

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

Exhibit 9

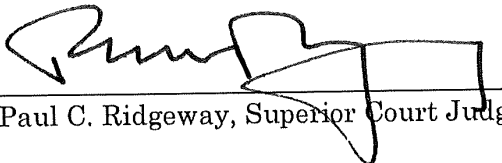
FILED
STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
WAKE COUNTY 710 FEB 25 AM 11:07 SUPERIOR COURT DIVISION
18 CVS 014001

COMMON CAUSE, *et al.*)
Plaintiffs,)
v.)
Representative DAVID R. LEWIS,)
in his official capacity as Senior)
Chairman of the House Select)
Committee on Redistricting, *et al.*,)
Defendants.)

ORDER

THIS MATTER comes before the undersigned Three-Judge Panel upon the submission by the parties of a Stipulated Proposed Case Management Order filed February 15, 2019. Upon consideration by the Court, it is ORDERED that the schedule and deadlines set out in the Stipulated Proposed Case Management Order be adopted.

This the 22nd day of February, 2019.


Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite

Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton

Alma L. Hinton, Superior Court Judge

FILED
2019 FEB 15 PM 4:02
WAKE COUNTY, N.C.
LM

STATE OF NORTH CAROLINA
COUNTY OF WAKE

COMMON CAUSE, et al.,
Plaintiffs,
v.
DAVID LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR
CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON
REDISTRICTING, et al.,
Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

**STIPULATED PROPOSED
CASE MANAGEMENT
ORDER
(OTHR)**

Pursuant to the Court's Order of February 1, 2019, the parties have conferred and agreed upon a case management schedule. The parties have all agreed to forego dispositive pre-trial motions, and accordingly the parties' agreed-upon schedule does not include any deadlines for dispositive motions. The parties have agreed upon the below schedule and deadlines:

Event	Agreed-Upon Dates
Completion of Written Discovery from Current Defendants, Consistent with the N.C. Rules of Civil Procedure	March 20, 2019
Plaintiffs' Expert Reports	March 22, 2019
Completion of Written Discovery from All Other Parties and All Third Parties, Consistent with the N.C. Rules of Civil Procedure	April 17, 2019
Defendants' Expert Reports	April 30, 2019
Completion of Fact Discovery	May 17, 2019
Plaintiffs' Rebuttal Reports	May 31, 2019
Exchange Deposition Designations	June 12, 2019
Expert Witness Deposition Deadline	June 14, 2019
Exchange Deposition Counter-Designations and Objections to Designations	June 19, 2019
Motions in Limine/Motions to Exclude under N.C. Rule 702(a)	June 21, 2019
File Objections to Deposition Counter-Designations	June 26, 2019

Confer Regarding Objections to Deposition Designations	June 28, 2019
Opposition to Motions in Limine/Motions to Exclude under N.C. Rule 702(a)	July 1, 2019
All Parties Exchange Witness and Exhibit Lists	July 1, 2019
Submit to the Court a Conformed Set of Agreed Deposition Designations	July 3, 2019
Submit to the Court for Resolution Unresolved Deposition Designation Objections.	July 3, 2019
Pretrial Stipulations	July 8, 2019
File Objections to Exhibits	July 8, 2019
Trial Briefs	July 8, 2019
Pre-Trial Hearing on Outstanding Motions	July 10, 2019
Deliver to the Court Hard Copy Pre-Marked, Indexed Exhibits	July 12, 2019
Trial Begins	July 15, 2019
Post-Trial Briefs	10 days after conclusion of trial

* * *

WHEREFORE, the parties request that the Court enter an order adopting the case management schedule set forth above.

Respectfully submitted this the 15th day of February, 2019.

POYNER SPRUILL LLP

By: Edwin M. Speas, Jr.
Edwin M. Speas, Jr.
N.C. State Bar No. 4112 *with permission*
Caroline P. Mackie *by EMM*
N.C. State Bar No. 41512 *Bar No. 53227*
P.O. Box 1801
Raleigh, NC 27602-1801
(919) 783-6400
espeas@poynerspruill.com

*Counsel for Common Cause, the
North Carolina Democratic Party,
and the Individual Plaintiffs*

**ARNOLD & PORTER
KAYE SCHOLER LLP**

R. Stanton Jones*
David P. Gersch*
Elisabeth S. Theodore*
Daniel F. Jacobson*
601 Massachusetts Ave. NW
Washington, DC 20001-3743
(202) 942-5000
stanton.jones@arnoldporter.com

PERKINS COIE LLP

Marc E. Elias*
Aria C. Branch*
700 13th Street NW
Washington, DC 20005-3960
(202) 654-6200
melias@perkinscoie.com

Abha Khanna*
1201 Third Avenue
Suite 4900
Seattle, WA 98101-3099
(206) 359-8000
akhanna@perkinscoie.com

*Counsel for Common Cause and the
Individual Plaintiffs*

**Pro hac vice motions pending*

BAKER & HOSTETLER, LLP

E. Mark Braden* (DC Bar No. 419915)
Richard B. Raile* (Va. Bar No. 84340)
Trevor M. Stanley* (Va. Bar No. 77351)
1050 Connecticut Ave Suite 1100
Washington, DC, 20036
rraile@bakerlaw.com
mbraden@bakerlaw.com
tstanley@bakerlaw.com
Telephone: (202) 861-1500
Facsimile: (202) 861-1783

**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.**

Phillip J. Strach (N.C. Bar # No. 29456)
Michael D. McKnight (N.C. Bar # No. 36932)
4208 Six Forks Road, Suite 1100
Raleigh, North Carolina 27609
phil.strach@ogletreedeakins.com
michael.mcknight@ogletreedeakins.com
Telephone: (919) 787-9700
Facsimile: (919) 783-9412

Counsel for Legislative Defendants

**Pro hac vice motions pending*

Amar Majmundar (N.C. Bar No. 24668)
Senior Deputy Attorney General
Stephanie A. Brennan (N.C. Bar No. 35955)
Special Deputy Attorney General
North Carolina Dept. of Justice
P.O. Box 629
Raleigh, NC 27602
Email: sbrennan@ncdoj.gov
Tele No.: (919) 716-6920
Fax No.: (919) 716-6763

Counsel for State Defendants

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to the following persons at the following addresses which are the last addresses known to me:

Amar Majmudar
Stephanie A. Brennan
NC Department of Justice
P.O. Box 629
114 W. Edenton St.
Raleigh, NC 27602
amajmudar@ncdoj.gov
sbrennan@ncdoj.gov
*Counsel for the State of North Carolina and State Board of
Elections and Ethics Enforcement and its members*

Phillip J. Strach
Michael McKnight
Alyssa Riggins
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 1100
Raleigh, NC 27609
Phillip.strach@ogletree.com
Michael.mcknight@ogletree.com
Alyssa.riggins@ogletree.com

E. Mark Braden
Richard B. Raile
Trevor M. Stanley
Baker & Hostetler, LLP
Washington Square, Suite 1100
1050 Connecticut Ave., N.W.
Washington, DC 20036-5403
rraile@bakerlaw.com
mbraden@bakerlaw.com
tstanley@bakerlaw.com
Counsel for the Legislative Defendants

This the 15th day of February, 2019.

Caroline P. Mackie with permission
Caroline P. Mackie by EMM
NC State Bar No.
53227

Exhibit 10

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

FILED

COMMON CAUSE, *et al.* ^{2019, MAR 21 P 14}
Plaintiffs,

v.

WAKE COUNTY,

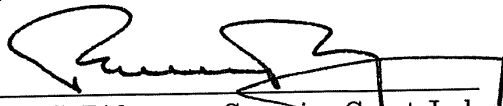
AMENDED
CASE MANAGEMENT ORDER

Representative DAVID R. LEWIS,
in his official capacity as Senior
Chairman of the House Select
Committee on Redistricting, et al.,
Defendants.

THIS MATTER comes before the undersigned Three-Judge Panel upon Legislative Defendants' Motion for a Protective Order, Plaintiffs' First Motion to Compel, and Plaintiffs' Second Motion to Compel. For the purposes of efficient management of this matter, the Court orders the following:

1. The Case Management Order entered in this case on February 15, 2019, is amended by this Order.
2. Due to the discovery motions filed by the Parties, the Three-Judge Panel will extend the deadline for Plaintiffs to submit their expert reports to April 1, 2019.
3. The terms of the February 15, 2019, Order remain otherwise in full effect.

So ordered, this the 21st day of March, 2019.


Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite

Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton

Alma L. Hinton, Superior Court Judge

Certificate of Service

The undersigned certifies that the foregoing was served upon all parties by electronic mail, addressed as follows:

Edwin M. Speas, Jr.
Caroline P. Mackie
Poyner Spruill LLP
espeas@poynerspruill.com
cmackie@poynerspruill.com
*Counsel for Common Cause,
The North Carolina Democratic Party
And the Individual Plaintiffs*

R. Stanton Jones
David P. Gersch
Elisabeth S. Theodore
Daniel F. Jacobson
Arnold & Porter Kaye Scholer, LLP
Stanton.jones@arnoldporter.com
David.gersch@arnoldporter.com
Elisabeth.theodore@arnoldporter.com
Daniel.jacobson@arnoldporter.com
*Counsel for Common Cause
And for Individual Plaintiffs*

Mark E. Braden
Richard Raile
Trevor Stanley
Baker & Hostetler, LLP
rraile@bakerlaw.com
mbraden@bakerlaw.com
tstanley@bakerlaw.com
Attorneys for Legislative Defendants

Marc E. Elias
Aria C. Branch
Perkins Coie, LLP
melias@perkinscoie.com
ABranch@perkinscoie.com
*Counsel for Common Cause
And the Individual Plaintiffs*

Abha Khanna
Perkins Coie, LLP
akhanna@perkinscoie.com
*Counsel for Common Cause
And the individual Plaintiffs*

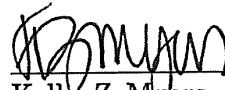
Phillip J. Strach
Michael McKnight
Alyssa Riggins
Ogletree, Deakins et al.
Phillip.strach@ogletree.com
Michael.mcknight@ogletree.com
Alyssa.riggins@ogletree.com
Counsel for Legislative Defendants

Stephanie A. Brennan
Amar Majmundar
Paul Cox
NC Department of Justice
sbrennan@ncdoj.gov
amajmundar@ncdoj.gov
pcox@ncdoj.gov
*Counsel for the State of North
Carolina and members of the State
Board of Elections*

Josh Lawson
NC State Board of Elections
joshua.lawson@ncsbe.gov
*Counsel for the State Board of
Elections*

John E. Branch, III
H. Denton Worrell
Nathaniel J. Pencook
Shanahan McDougal, PLLC
jbranch@shanahanmcdougal.com
dworrellshanahanmcdougal.com
npencook@shanahanmcdougal.com
Attorneys for Defendant-Intervenors

This the 21st day of March, 2019.



Kellie Z. Myers
Trial Court Administrator
10th Judicial District
Kellie.Z.Myers@nccourts.org

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 21 CVS 015426
No. 21 CVS 500085

NORTH CAROLINA LEAGUE OF CONSERVATION
VOTERS, INC., *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

**HARPER PLAINTIFFS’
OPPOSITION TO
LEGISLATIVE
DEFENDANTS’ MOTION
TO COMPEL**

Legislative Defendants are not entitled, under either this Court's scheduling order or any rule, to source code and backup materials associated with preliminary-injunction-stage expert reports that Plaintiffs are not planning to introduce as evidence at the merits stage of this case. Indeed, in their proposed schedule, Legislative Defendants proposed requiring plaintiffs to disclose source code associated with their experts’ preliminary-injunction-stage reports, but this Court’s scheduling order does not require such a disclosure. Nonetheless, Legislative

Defendants would already have the requested preliminary-injunction-stage code if they would simply agree to entry of a routine protective order that is identical to the one that all parties agreed to, and that was used without incident, in the 2019 *Common Cause* case, and that allows Legislative Defendants and their experts to use source code and any other confidential data for any case-related purpose.¹ It is inexplicable that Legislative Defendants, after initially advising that they had no problems with a protective order, and while insisting that they need “immediate access” to the preliminary-injunction-stage source code, Mot. to Compel at 14, have chosen to delay their own access to this material for purposes of this case on the theory that they must be allowed to publicly disseminate the experts’ proprietary and confidential source code without restriction, including for non-case-related purposes.

Harper Plaintiffs provide a fuller background regarding this dispute in their motion for a protective order, also filed today. See Pls.’ Mot. for Protective Order ¶¶ 9-12. As explained in that motion, if the Court enters the proposed Protective Order, Plaintiffs will promptly turn over their experts’ preliminary injunction-stage materials and Legislative Defendants’ motion to compel will be moot. *Id.* ¶¶ 12, 18. And as Plaintiffs explained in their motion, there is ample cause to enter the proposed Protective Order, which is a routine measure in litigation like this involving confidential material. Pls.’ Mot. for Protective Order ¶ 4; see *Longman v. Food Lion, Inc.*, 186 F.R.D. 331, 333 (M.D.N.C. 1999) (protective orders are “essential to the efficient functioning of the discovery process” in cases involving confidential information). Academics frequently treat their source code underlying their expert analysis as confidential, as disclosure of that code could enable other academics to publish work using the code before the experts can do

¹ Legislative Defendants seem to assume throughout their motion that all expert-related data will be necessarily marked confidential. That is incorrect. Entry of a protective order simply allows Plaintiffs to mark data as confidential if it is in fact confidential (such as source code).

so themselves. Pls.’ Mot. for Protective Order ¶ 5. That is why all parties consented to an identical protective order in *Common Cause*, and why under that protective order expert code and certain other data was produced as confidential with no objection, and with no restriction on public access to court filings or proceedings. *Id.* ¶¶ 7-8. Although Legislative Defendants puzzlingly argue that the mere entry of a protective order and designation of experts’ source code as confidential will necessitate “sealing portions of deposition transcripts, closing parts of the trial, [and] sealing exhibits,” Mot. 15, literally none of those things happened in the 2019 *Common Cause* case even though source code was designated confidential. That is because source code is discovery material that experts analyze and can testify about at trial, just as occurred in *Common Cause*. It is not going to be an exhibit presented to the Court.

Plaintiffs’ motion for a protective order also explains why the central premise of Legislative Defendants’ motion to compel—that a routine protective order would somehow inhibit “public access” to judicial proceedings—is irreconcilable with black-letter law. Pls.’ Mot. for Protective Order ¶¶ 13-14. Expert backup materials are discovery materials under Rule 26, and discovery material is not a “judicial record.” *See, e.g., United States v. Johnson*, No. 12-CV-1349, 2014 WL 12787211, at *2 (M.D.N.C. Feb. 10, 2014). Courts enter protective orders to restrict dissemination of discovery material all the time; they do not violate the First Amendment or related rights of public access. *See, e.g., United States v. Aguilar*, 515 U.S. 593, 606 (1995) (“protective orders may be imposed in connection with information acquired through civil discovery without violating the First Amendment”) (citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 37 (1984)). What’s more, under the Protective Order itself, Legislative Defendants would remain able to challenge particular confidentiality designations if they believe them to be improper. *See* Protective Order, Ex. A to Pls.’ Mot. to Compel, ¶ 7(e). And Defendants’ experts

and counsel would remain free to examine any code and data designated as confidential, and to use that information in attempting to critique the analysis of Plaintiffs’ experts—just like in the 2019 *Common Cause* case. And any rebuttal reports or witness testimony relying on the code and data would remain public. Pls.’ Mot. for Protective Order ¶ 15.

If the Court denies Plaintiffs’ motion for a protective order, it should still deny the motion to compel. The Court’s scheduling order did not incorporate language proposed by Legislative Defendants that would have required all plaintiffs, by December 13, to “submit data supporting expert reports already submitted.” Legislative Defendants’ Submission on Scheduling at 2 (Dec. 10, 2021). Instead, this Court’s scheduling order requires the production of expert source code and data *with* expert reports. Case Scheduling Order ¶ 4. Those reports are not due until December 23 and 28. *Id.* ¶ 1. As Plaintiffs have told Legislative Defendants, they will be producing all required source code and data on those dates. Plaintiffs believe that the source code produced with on those dates should be treated as confidential, but if the Court denies Plaintiffs’ motion for entry of a protective order, Plaintiffs will of course comply with the scheduling order. And Legislative Defendants have identified no rule or precedent requiring the disclosure of proprietary code and underlying data for early-stage expert reports that are not going to be used as evidence during the merits phase. It would extremely prejudicial to require plaintiffs to turn over confidential material that does not even form the basis for any expert report that this Court will be considering as evidence in this case. Legislative Defendants note that they will have a short time to prepare rebuttal reports, but Plaintiffs will have exactly the same short period to prepare rebuttal reports—without the benefit of a preview of what Legislative Defendants’ experts will say.

Respectfully submitted, this the 15th day of December, 2021.

By: /s/ Narendra K. Ghosh

PATTERSON HARKAVY LLP

Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Harper Plaintiffs

ELIAS LAW GROUP LLP

Lalitha D. Madduri*
Jacob D. Shelly*
Graham W. White
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

Abha Khanna*
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
AKhanna@elias.law

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

Elisabeth S. Theodore
R. Stanton Jones*
Samuel F. Callahan
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
elisabeth.theodore@arnoldporter.com

Counsel for Harper Plaintiffs

**Pro hac vice motion pending*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to counsel for all other parties.

This the 15th day of December, 2021.

/s/ Narendra K. Ghosh
Narendra K. Ghosh, NC Bar No. 37649

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426, 21 CVS 500085

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, INC.;
HENRY M. MICHAUX, JR., et al.,

Plaintiffs,

REBECCA HARPER, et al.,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

NCLCV PLAINTIFFS’
OPPOSITION TO MOTION TO
COMPEL

The NCLCV Plaintiffs hereby oppose the Motion to Compel (the “Motion”) filed by the Legislative Defendants, both as premature and—more important—to the extent it seeks documents never in the possession of or considered by the NCLCV Plaintiffs’ expert, Professor Moon Duchin.

INTRODUCTION

The Motion appears to seek unprecedented expert discovery—namely, documents that were not provided to, were never in the possession of, and were not considered by Professor Duchin. The Motion also violates the Court’s December 13 Scheduling Order by demanding disclosures before the Order requires. As this Court knows, the Legislative Defendants proposed an order that would have limited Plaintiffs to their preliminary-injunction stage reports and would have required Plaintiffs to produce by December 13 “data supporting expert reports already submitted (including all source code, source data, input parameters, and all outputted data.” The Court instead required both sides to produce their opening reports by December 23 and specified

that these reports “*shall be accompanied* by all source code, source data, input parameters, and all outputted data.” The NCLCV Plaintiffs intend to comply with that Order and to produce appropriate expert discovery to “accompany” their report on December 23. Nonetheless, the Legislative Defendants seek to compel, even before expert reports are due, sweeping discovery that goes beyond anything the Legislative Defendants could legitimately obtain in expert discovery.

The NCLCV Plaintiffs wish to make their position clear: They intend to produce all facts and data that Professor Duchin considered in forming her opinions and creating her report, consistent with normal rules governing expert disclosures. These disclosures will provide the information necessary for the Legislative Defendants to replicate and test the conclusions in Professor Duchin’s report. That will include the block-assignment files for the Enacted Plans and Optimized Maps that Professor Duchin analyzed, election results by voting-tabulation district, address information for members of Congress and the General Assembly, and identification of the open-source software that Professor Duchin used.

Indeed, the Legislative Defendants have already received much of this information. To be sure, they have not yet received all of it. For example, Professor Duchin *did* consider the block-assignment files that embody the Optimized Maps. And the NCLCV Plaintiffs have *not yet* produced those block-assignment files. Instead, they filed with the Court “plan component reports” that were attached as Exhibits G, H, and AI to the affidavits of Stephen D. Feldman. These reports can be used to reproduce the Optimized Maps. But reproducing the maps is easier, and quicker, with the block-assignment files. The NCLCV Plaintiffs fully intend to disclose those block-assignment files by the Scheduling Order’s December 23 deadline (along with other facts or data Professor Duchin considers in producing her report). If the Court orders those files

produced sooner, the NCLCV Plaintiffs will of course do so.¹ The Legislative Defendants, however, will incur no prejudice from not receiving information that the NCLCV Plaintiffs’ own expert *never* received or considered. Anyone who wants to replicate or test Professor Duchin’s analysis can do so using the information that the NCLCV Plaintiffs have produced and will produce. And neither Professor Duchin nor the NCLCV Plaintiffs will rely on anything *besides* that information to prove their case.

To be clear, the NCLCV Plaintiffs agree that information like “source code” and “input parameters” is sometimes discoverable. Such information is properly discoverable when testifying experts *employ* that source code and when that source code is necessary to *replicate* the testifying expert’s analyses. The *Harper* Plaintiffs’ testifying experts, for example, analyze “ensembles” of thousands of maps, and it may not be possible to replicate those analyses without the code used to create the ensembles. Such code may sometimes be discoverable, and the NCLCV Plaintiffs take no position on whether a protective order is needed. Professor Duchin, however, did not perform any ensemble analysis. And her analysis of the Enacted Plans and the Optimized Maps can be replicated using information that the NCLCV Plaintiffs have produced and will produce.

The Legislative Defendants, remarkably, do not address the rules governing expert disclosures. Apparently recognizing that they seek discovery beyond what the North Carolina Rules permit, they stake their Motion on the claim that the “First Amendment right of access to civil trials” and related doctrines require production. Mot. 7. Those doctrines, however, concern the public’s right to access information that is *filed* in courts. They do not entitle one party to obtain *discovery* from another party of information that was *never filed* in any court. Such

¹ The NCLCV Plaintiffs note that the Legislative Defendants did not request the block-assignment files before moving the Court for relief.

questions are governed by the principles of expert discovery. This Court should make clear that expert disclosures here will accord with those principles. Moreover, to the extent the Court orders the NCLCV Plaintiffs to produce early expert discovery in response to the Motion, the NCLCV Plaintiffs reserve the right to assert applicable privileges (including, *inter alia*, attorney-client privilege and work product, and Rule 26(b)(4)). That reservation is particularly appropriate given that the NCLCV Plaintiffs had only 5 business hours to respond to the Motion.

BACKGROUND

The Legislative Defendants’ arguments turn, substantially, on what information Professor Duchin considered—and did not—consider. The NCLCV Plaintiffs thus begin there.

A. Professor Duchin’s Analysis And Report.

The affidavit Professor Duchin submitted at the preliminary-injunction phase “evaluat[ed] the properties of the[] plans” that the NCLCV Plaintiffs have identified as the “Enacted Plans”—the Enacted Congressional Plan, the Enacted Senate Plan, and the Enacted House Plan, all passed by the General Assembly on November 4, 2021. Duchin Aff. 3 (attached hereto as Ex. A). In particular, she analyzed whether those plans yielded a “partisan imbalance” (and concluded that the imbalance was “egregious”). *Id.* She also assessed the argument that “the state’s political geography compel[ed]” the Enacted Plans’ “massive and entrenched partisan skew.” *Id.* To do so, she compared the Enacted Plans with the Optimized Plans that the NCLCV Plaintiffs attached to their Verified Complaint and that counsel provided to her.

Professor Duchin did so by analyzing the objective features of the Enacted Plans and Optimized Maps, without regard to how those maps were created—using open-source software that anyone can employ to analyze these maps. She proceeded as follows:²

1. Professor Duchin received, as inputs, “block-assignment files” for both the Enacted Plans and the Optimized Maps. Block-assignment files are simple two-column spreadsheets with the Census label for each block in the state in the left column and the number of the district to which the block is assigned (1 to 14 for Congress, 1 to 50 for Senate, 1 to 120 for House) in the right column.
2. The block-assignment files for the Enacted Congressional Plan, the Enacted Senate Plan, and the Enacted House Plan are available from the General Assembly’s website.³ The block-assignment files for the Optimized Congressional Map, the Optimized Senate Map, and the Optimized House Map were provided to Professor Duchin by counsel.
3. To analyze the Enacted Plans and the Optimized Maps, Professor Duchin and her assistants used publicly available software, namely Python, QGIS, and GeoPandas, along with a publicly maintained codebase that can be accessed in the following GitHub repositories: (1) MGGG Redistricting Lab, *GerryChain Python Package*, github.com/mggg/gerrychain; and (2) MGGG Redistricting Lab, *MAUP GeoSpatial Python Package*, github.com/mggg/maup. All of these tools are publicly available and readily accessible.
4. These tools allowed Professor Duchin to identify various characteristics of the maps and districts, such as population, compactness, contiguity, the extent to which they divided political subdivisions, and the extent to which they paired (or “double bunked”) two incumbents in the same district. (The double-bunking analysis requires an additional input—namely, incumbents’ address information. Professor Moon’s forthcoming report will use a spreadsheet provided by the Legislative Defendants.) The results of that analysis are reported in Tables 1–4 to Professor Duchin’s affidavit (Ex. A).
5. Professor Duchin and her research assistants also used the tools described in Paragraph 3 to see how the districting plans divide up the vote patterns of 52 recent statewide general elections that are available publicly for each “voting tabulation district” (or “VTD”) in the State. This analysis does not employ any statistical modeling. Instead, it is simply done by reporting whether the Democratic or the Republican candidate in the statewide election received more votes in each district. With this method, Professor Duchin obtained a seat

² Counsel for the NCLCV Plaintiffs have confirmed the substance of the statements in this section with Professor Duchin. Given the short response time, the NCLCV Plaintiffs have not been able to provide an affidavit to support these statements. But the NCLCV Plaintiffs stand ready to do so if the Court so directs.

³ See N.C. Gen. Assembly, Legislative & Congressional Redistricting, 2021 Redistricting, <https://www.ncleg.gov/Redistricting> (showing “Block Assignment File” for each of the “Congressional,” “State Senate,” and “State House” plans).

share for each majority party for every pairing of a statewide election and a districting plan (namely, the Enacted Plans and the Optimized Maps). The sole additional calculation this process required, beyond simple arithmetic, occurred when either the Enacted Plan or the Optimized Plan subdivided a VTD into its census blocks. In those circumstances, Professor Duchin employed the standard disaggregation technique of allocating the votes for each candidate pro rata to each census block, proportional to the block’s voting age population. The results of that analysis are reported in Tables 5–6 and Figures 2–6 of Professor Duchin’s affidavit.

Notably, the Legislative Defendants already have or will soon have all the information Professor Duchin considered in undertaking these analyses and already have everything needed to test and replicate those analyses. As detailed above, the “inputs” for her analyses consist of:

- The block-assignment files for the Enacted Plans and the Optimized Maps.
- Electoral data available from North Carolina official websites.
- Incumbent addresses.⁴

The only inputs that Legislative Defendants do not have are the block-assignment files for the Optimized Maps. Legislative Defendants can reconstruct the Optimized Maps using Exhibits G, H, and AI to the affidavits of Stephen Feldman, which have been publicly filed. The NCLCV Plaintiffs, however, had planned to provide more granular block-assignment files for all three Optimized Maps with the report of the expert who relied upon them, consistent with the Court’s Scheduling Order.

⁴ Although the NCLCV Plaintiffs have not produced the documents containing the address information that Professor Duchin used to create her preliminary-injunction affidavit, the Legislative Defendants *already have* address information. Moreover, the NCLCV Plaintiffs anticipate that Professor Duchin will update her analysis with the spreadsheet that the Legislative Defendants produced.

The NCLCV Plaintiffs have also produced Professor Duchin’s affidavit, which details the “output” of her analyses. When the NCLCV Plaintiffs submit Professor Duchin’s new report on December 23, they will also provide the full backup data that her tables and figures reflect.⁵

B. The Legislative Defendants’ Requests.

The NCLCV Plaintiffs fully intend to produce the facts and data that Professor Duchin considers in forming her opinions and creating her report that the NCLCV Plaintiffs intend to submit on December 23, 2021. The Legislative Defendants, however, have also sought a series of “source code, source data, [and] input parameters” never received or considered by Professor Duchin or any other testifying expert in this case. In particular, they have sought “the source code, source data, input parameters (as defined above), and output data (as defined above) used to generate the three ‘Optimized’ Maps/Plans that the NCLCV Plaintiffs asked Dr. Duchin to assess.” Email from Katherine L. McKnight dated December 9, 2021 (attached hereto as Ex. B). Professor Duchin, however, never received or considered any source code, source data, or input parameters used to generate the Optimized Maps. Instead, she received the block-assignment files that the NCLCV Plaintiffs intend to disclose pursuant to the Scheduling Order. The NCLCV Plaintiffs have thus refused to comply with the Legislative Defendants’ requests, as both premature and outside the scope of appropriate expert discovery.

⁵ Because Professor Duchin’s December 23 report is expected to address the racial vote-dilution claims that the NCLCV Plaintiffs did not litigate at the preliminary-injunction stage, that report will differ from her preliminary-injunction affidavit. Again, per the Court’s Scheduling Order, the NCLCV Plaintiffs intend to produce the facts or data considered by Professor Duchin in producing that report, including any “source code, source data, input parameters, and ... outputted data” that Professor Duchin herself employs. Scheduling Order at 6.

ARGUMENT

The Legislative Defendants’ Motion is both premature and seeks documents beyond the scope of appropriate expert disclosures under Rule 26 and this Court’s Scheduling Order. The Court should deny the Motion and instead permit the NCLCV Plaintiffs to produce the materials that the Scheduling Order requires on the timeline the Scheduling Order provides.

I. The Motion Violates The Court’s Scheduling Order By Seeking Premature Disclosures.

The Motion violates the Court’s Scheduling Order by demanding disclosures before the Order requires. As this Court knows, the Legislative Defendants proposed an order that would have limited Plaintiffs to their preliminary-injunction stage reports and would have required Plaintiffs to produce by December 13 “data supporting expert reports already submitted (including all source code, source data, input parameters, and all outputted data.” The Court instead required the parties to produce their opening reports by December 23, 2021 and specified that these reports “*shall be accompanied* by all source code, source data, input parameters, and all outputted data.” The NCLCV Plaintiffs intend to comply with that Order and to produce appropriate expert discovery to “accompany” their report on December 23.

The Legislative Defendants incorrectly claim that the Scheduling Order requires immediate production of materials related to the preliminary-injunction stage reports because the Scheduling Order, in Paragraph 4, refers generally to “[e]xpert reports produced to an opposing party.” Mot. 4. That Paragraph, however, follows Paragraph 1, in which the Court set deadlines for “the parties’ exchange of evidence,” including “expert witness reports.” The NCLCV Plaintiffs did not “produce[]” Professor Duchin’s preliminary-injunction affidavit to the Legislative Defendants under the Scheduling Order; they *filed* that report with the Court (and indeed, did so before the Legislative Defendants had even been served).

Nor is there anything to the Legislative Defendants’ claim that it would be “inequitable and untenable” for disclosures to proceed as scheduled on December 23. Mot. 7. Indeed, the Legislative Defendants are far *better off* than the NCLCV Plaintiffs (and the *Harper* Plaintiffs). The Legislative Defendants will likely produce, on December 23, expert reports that are far more detailed than the cursory affidavit submitted by Sean Trende at the preliminary-injunction stage. The Plaintiffs will then have only five days, until December 28, to submit rebuttal evidence. The Court should reject the Legislative Defendants’ attempt to revise the process and timeline it established in the Scheduling Order.

II. The Motion Violates The Scheduling Order And Rule 26 To The Extent It Seeks Documents That Are Not Proper Expert Disclosures.

The Motion should also be denied to the extent it seeks documents that are not properly discoverable, including “source code, source data, [and] input parameters” that Professor Duchin never received or considered. Such disclosures are beyond the scope of the Scheduling Order, which contemplates disclosures of “source code, source data, input parameters, and ... outputted data” that the testifying expert *considered*, not documents that the testifying expert never received or considered. So, too, the Legislative Defendants’ Motion violates Rule 26, which also does not provide for such disclosures. And the First Amendment and related doctrines that the Legislative Defendants invoke are simply irrelevant to the disclosures they seek here.

A. The Motion Should Be Denied To The Extent It Seeks Disclosure Of Documents Never In The Possession Of Or Considered By Testifying Experts.

The Motion should be denied to the extent it seeks documents that are not properly within the scope of expert discovery. Discovery relating to experts is governed by Rule 26(b)(4) of the North Carolina Rules of Civil Procedure. Under Rule 26, written reports provided by testifying experts must contain, among other things: (I) “[a] complete statement of all opinions the witness will express and the basis and reasons for them[;] and (II) “[t]he facts or data considered by the

witness in forming them.” Rule 26(b)(4)(a)(I-II). Expert discovery may not go beyond the information that the expert considered in forming his or her opinions. *E.g., Peterson v. Seagate US LLC*, No. CIV. 07-2502 MJD AJB, 2011 WL 861580, at *1 (D. Minn. Feb. 2, 2011) (“The court declines to reconsider its prior order and also declines to compel production of evaluation materials that were not considered by the defendant’s own experts in arriving at opinions”); *United States v. Am. Exp. Co.*, No. 10-CV-4496 NGG RER, 2014 WL 2879811, at *7 (E.D.N.Y. June 24, 2014) (“Rule 26 does not require production of data that was neither received nor considered by” the expert).⁶ As explained above, this Court’s Scheduling Order is properly read as consistent with those principles: It contemplates disclosure of the “source code, source data, input parameters, and ... outputted data” that testifying experts consider in creating their reports. Scheduling Order 6.

Federal courts applying the same language have held that parties may not obtain more information from testifying experts through general discovery mechanisms than is required by the specific provisions of Rule 26 applying to testifying expert reports. The court in *Morriss v. BNSF Ry. Co.*, 2014 WL 128393, *6 (D. Neb. Jan. 13, 2014), considered this question and held that the specific discovery provisions in Fed. R. Civ. Pro. 26(a)(2) and 26(b)(4) were the maximum that a party could obtain, not a minimum requirement: Hence, “the broad discovery provisions of Rule 34 and Rule 45 cannot be used to undermine the specific expert witness discovery rules in Rule 26(a)(2) and (b)(4).” Likewise here, the Legislative Defendants are not entitled to greater discovery than Rule 26 would permit. The NCLCV Plaintiffs will continue to provide appropriate disclosures with Professor Duchin’s forthcoming expert report. But the Court should reject the

⁶ See *Tetra Tech Tesoro, Inc. v. JAAAT Tech. Servs., LLC*, 250 N.C. App. 791, 797–98, 794 S.E.2d 535, 539 (2016) (“This Court has long held that federal decisions interpreting the federal rules are persuasive authority when interpreting similar state rules.”).

Legislative Defendants’ attempt to obtain—as expert disclosures—documents that Professor Duchin never received or considered.

B. The Legislative Defendants’ First Amendment And Related Arguments Are Irrelevant.

Without engaging with North Carolina’s law of *expert disclosure*, the Legislative Defendants instead stake their Motion on the claim that the “First Amendment right of access to civil trials,” and similar rights under North Carolina, compel the disclosure in discovery of documents that Professor Duchin never received or considered. Mot. 7. But those doctrines—including the First Amendment, North Carolina State Constitution, the common law, and the North Carolina Public Records Act—all apply exclusively to documents *filed* with the court. *In re Pol’y Mgmt. Sys. Corp.*, 67 F.3d 296 (4th Cir. 1995) (finding that the First Amendment right of access only extends to particular judicial records and documents filed in connection with dispositive motions and that are considered by the court when ruling on those motions); *Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 476 (1999) (finding that Article I, Section 18 of the North Carolina Constitution provides a qualified right of access to civil court records); *Baltimore Sun Co. v. Goetz*, 886 F.2d 60, 65 (4th Cir. 1989) (recognizing a common law qualified right to judicial records subject to the discretion of the court); *In re Investigation into Death of Cooper*, 683 S.E.2d 418, 425 (N.C. App. 2009) (same); *Virmani*, 350 N.C. at 476 (finding that documents filed with the court become public records for the purposes of North Carolina’s public records act).

By contrast, none of those documents confer on one party to litigation a right to obtain from another party documents that were *never filed* in court. Tellingly, the Legislative Defendants’ Motion cites no authority—none—applying any of these doctrines to require the production of documents never filed with any court. That is because no such authority exists.

Indeed, courts routinely reject attempts by parties and third parties to use these doctrines to obtain discovery materials and unproduced documents. *See, e.g., In re Subpoena Duces Tecum Served on Amerix Corp.*, No. CV WDQ-07-2737, 2008 WL 11518429, at *1 (D. Md. Jan. 31, 2008) (no public right of access to subpoenaed documents because the documents had not been produced and filed in any court proceeding); *Spears v. Wal-Mart Stores E., LP*, No. 2:18-CV-152, 2021 WL 472927, at *2 (S.D. Ga. Feb. 9, 2021) (“As a threshold matter, the common-law right of access to judicial proceedings does not apply to discovery material not filed with a substantive motion.”); *Dahl v. Bain Cap. Partners, LLC*, 891 F. Supp. 2d 221, 224 (D. Mass. 2012) (discovery material not filed with court was not entitled to presumption of public access); *United States v. Ring*, 47 F. Supp. 3d 38, 41 (D.D.C. 2014) (“If a document is not filed with the court, it is not part of the judicial record and is not subject to a common law right of access.”); *Johnson v. City of Chicago*, No. 05 C 6545, 2006 WL 3147715, at *2 (N.D. Ill. Nov. 1, 2006) (no common law public right of access to documents that were not filed in court, and no First Amendment right of access to the documents because pretrial discovery has not been traditionally open to the public); *accord Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 32-37 (1984) (explaining that discovery materials are not a traditionally public source of information); *Tavoulareas v. Wash. Post Co.*, 724 F.2d 1010, 1016-29 (D.C. Cir. 1984) (no common-law right of access or First Amendment right of access to discovery materials not used at trial).

Appearing to recognize that these doctrines do not support the Motion, the Legislative Defendants briefly invoke the “rule of completeness,” codified in N.C.G.S. § 8C-1, Rule 106. Mot.

10. This argument is also without merit. Rule 106 provides:

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

As the Court of Appeals has explained, Rule 106 “codifies the standard common law rule that when a writing or recorded statement or a part thereof is introduced by any party, an adverse party can obtain admission of the entire statement or anything so closely related that in fairness it too should be admitted.” *State v. Edwards*, 261 N.C. App. 459, 467, 820 S.E.2d 862, 868 (2018). This rule’s purpose “is merely to ensure that a misleading impression created by taking matters out of context is corrected on the spot, because of the inadequacy of repair work when delayed to a point later in the trial.” *Id.* (quoting *State v. Thompson*, 332 N.C. 204, 220 (1992)).

The rule of completeness is irrelevant here. The Legislative Defendants are not seeking to introduce in court an “other part” of a “writing or recorded statement” that the NCLCV Plaintiffs have introduced in court. They are seeking *discovery of entirely different documents*, on the theory that they have some relation to materials discussed in court. That request has nothing to do with the rule of completeness. And tellingly, the Legislative Defendants cite no authority applying the rule of completeness in a remotely similar situation. Their sole citation, *State v. Hensley*, 254 N.C. App. 173, 180, 802 S.E.2d 744, 750 (2017), concerned the admission at trial of the “full text of notes” when one side had referred to excerpts from those notes.

Indeed, even apart from these obvious legal defects, the Legislative Defendants’ arguments fundamentally mischaracterize the role that the Optimized Maps have played and will play in this litigation going forward. They say that the NCLCV Plaintiffs have asked that the Enacted Plans be “struck down” based on undisclosed information, Mot. 12-13, and they use that assertion to justify their broad disclosure demands. But at least as to the NCLCV Plaintiffs, the very opposite is true. The Enacted Plans will be judged according to their objective features. And the Optimized Plans that the NCLCV Plaintiffs have identified will be judged that same way. The Legislative Defendants already have the “plan components” files that allow them to analyze those objective

features and to replicate and test Professor Duchin’s conclusions concerning them. And shortly, the NCLCV Plaintiffs intend to produce the block-assignment files that will make it even easier for the Legislative Defendants to do so. The Court should reject the Legislative Defendants’ attempts to use their mischaracterizations to rewrite the law of expert disclosure in North Carolina.

CONCLUSION

The Motion should be denied. To the extent the Court considers granting the Motion in any respect, it should make clear that Plaintiffs need not produce documents that were never in the possession of or considered by the expert witnesses who have submitted or will submit expert reports.

Dated: December 15, 2021

Respectfully submitted,

JENNER & BLOCK LLP

Sam Hirsch*
Jessica Ring Amunson*
Kali Bracey*
Zachary C. Schauf*
Karthik P. Reddy*
Urja Mittal*
JENNER & BLOCK LLP
1099 New York Avenue NW, Suite 900
Washington, D.C. 20001
(202) 639-6000
shirsch@jenner.com
zschauf@jenner.com

* *Admitted pro hac vice*

ROBINSON, BRADSHAW & HINSON, P.A.

/s/Stephen Feldman

Stephen D. Feldman
North Carolina Bar No. 34940
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
(919) 239-2600
sfeldman@robinsonbradshaw.com

Adam K. Doerr
North Carolina Bar No. 37807
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
(704) 377-2536
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
North Carolina Bar No. 50247
ROBINSON, BRADSHAW & HINSON, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
(919) 328-8800
ezimmerman@robinsonbradshaw.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Opposition was served upon each of the parties to this action by electronic mail to counsel at the e-mail addresses indicated below, in accordance with North Carolina Rule of Civil Procedure 5(b)(1)(a):

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraig@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, DC 20002
lmadduri@elias.law
jshelly@elias.law
gwhite@elias.law

Abha Khanna
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
akhanna@elias.law

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
ARNOLD AND PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
stanton.jones@arnoldporter.com
samuel.callahan@arnoldporter.com

*Counsel for Plaintiffs Rebecca Harper,
et al.*

Phillip J. Strach
Thomas A. Farr
John E. Branch III
Alyssa M. Riggins
NELSON MULLINS RILEY & SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
phillip.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
john.branch@nelsonmullins.com
alyssa.riggins@nelsonmullins.com

Mark E. Braden
Katherine McKnight
Richard Raile
BAKER HOSTETLER LLP
1050 Connecticut Avenue NW,
Suite 1100
Washington, DC 20036
mbraden@bakerlaw.com
kmcknight@bakerlaw.com
rraile@bakerlaw.com

*Counsel for Defendants Representative Destin
Hall, Senator Warren Daniel, Senator Ralph E.
Hise, Jr., Senator Paul Newton, Representative
Timothy K. Moore, and Senator Phillip E.
Berger*

Terence Steed
Stephanie Brennan
Amar Majmundar
N.C. DEPARTMENT OF JUSTICE
Post Office Box 629
Raleigh, NC 27502-0629
tsteed@ncdoj.gov
sbrennan@ncdoj.gov
amajmundar@ncdoj.gov

*Counsel for Defendants the North Carolina
State Board of Elections, Damon Circosta,
Stella Anderson, Jeff Carmon III, Stacy Eggers
IV, Tommy Tucker, Karen Brinson Bell; and the
State of North Carolina*

This 15th day of December, 2021.

/s/Stephen Feldman
Stephen Feldman

Exhibit A

21 CV 015426

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

2021 NOV 16 P 4:27 SUPERIOR COURT DIVISION

CVS

NORTH CAROLINA LEAGUE OF CONSERVATION
VOTERS, INC.; HENRY M. MICHAUX, JR.; DANDRIELLE
LEWIS; TIMOTHY CHARTIER; TALIA FERNÓS;
KATHERINE NEWHALL; JASON PARSLEY; EDNA
SCOTT; ROBERTA SCOTT; YVETTE ROBERTS;
JEREANN KING JOHNSON; REVEREND REGINALD
WELLS; YARBROUGH WILLIAMS, JR.; REVEREND
DELORIS L. JERMAN; VIOLA RYALS FIGUEROA; and
COSMOS GEORGE,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in his official capacity
as Chair of the House Standing Committee on Redistricting;
SENATOR WARREN DANIEL, in his official capacity as Co-
Chair of the Senate Standing Committee on Redistricting and
Elections; SENATOR RALPH E. HISE, JR., in his official
capacity as Co-Chair of the Senate Standing Committee on
Redistricting and Elections; SENATOR PAUL NEWTON, in
his official capacity as Co-Chair of the Senate Standing
Committee on Redistricting and Elections;
REPRESENTATIVE TIMOTHY K. MOORE, in his official
capacity as Speaker of the North Carolina House of
Representatives; SENATOR PHILIP E. BERGER, in his
official capacity as President Pro Tempore of the North
Carolina Senate; THE STATE OF NORTH CAROLINA; THE
NORTH CAROLINA STATE BOARD OF ELECTIONS;
DAMON CIRCOSTA, in his official capacity as Chairman of
the North Carolina State Board of Elections; STELLA
ANDERSON, in her official capacity as Secretary of the North
Carolina State Board of Elections; JEFF CARMON III, in his
official capacity as Member of the North Carolina State Board
of Elections; STACY EGGERS IV, in his official capacity as
Member of the North Carolina State Board of Elections;
TOMMY TUCKER, in his official capacity as Member of the
North Carolina State Board of Elections; and KAREN
BRINSON BELL, in her official capacity as Executive Director
of the North Carolina State Board of Elections,

Defendants.

AFFIDAVIT OF
DR. MOON DUCHIN

I, Dr. Moon, Duchin, having been duly sworn by an officer authorized to administer oaths, depose and state as follows:

1. I am over 18 years of age, legally competent to give this Affidavit, and have personal knowledge of the facts set forth in this Affidavit.
2. All of the quantitative work described in this Affidavit was performed by myself with the support of research assistants working under my direct supervision.

Background and qualifications

3. I hold a Ph.D. and an M.S in Mathematics from the University of Chicago as well as an A.B. in Mathematics and Women's Studies from Harvard University.
4. I am a Professor of Mathematics and a Senior Fellow in the Jonathan M. Tisch College of Civic Life at Tufts University.
5. My general research areas are geometry, topology, dynamics, and applications of mathematics and computing to the study of elections and voting. My redistricting-related work has been published in venues such as the Election Law Journal, Political Analysis, Foundations of Data Science, the Notices of the American Mathematical Society, Statistics and Public Policy, the Virginia Policy Review, the Harvard Data Science Review, Foundations of Responsible Computing, and the Yale Law Journal Forum.
6. My research has had continuous grant support from the National Science Foundation since 2009, including a CAREER grant from 2013–2018. I am currently on the editorial board of the journals Advances in Mathematics and the Harvard Data Science Review. I was elected a Fellow of the American Mathematical Society in 2017 and was named a Radcliffe Fellow and a Guggenheim Fellow in 2018.
7. A current copy of my full CV is attached to this report.
8. I am compensated at the rate of \$400 per hour.

Analysis of 2021 enacted redistricting plans in North Carolina

Moon Duchin
Professor of Mathematics, Tufts University
Senior Fellow, Tisch College of Civic Life

November 16, 2021

1 Introduction

On November 4, 2021, the North Carolina General Assembly enacted three districting plans: maps of 14 U.S. Congressional districts, 50 state Senate districts, and 120 state House districts. This affidavit contains a brief summary of my evaluation of the properties of these plans. My focus will be on the egregious partisan imbalance in the enacted plans, following a brief review of the traditional districting principles.

Because redistricting inevitably involves complex interactions of rules, which can create intricate tradeoffs, it will be useful to employ a direct comparison to an alternative set of plans. These demonstrative plans illustrate that it is possible to *simultaneously maintain or improve* metrics for all of the most important redistricting principles that are operative in North Carolina’s constitution and state and federal law. Crucially, this shows that nothing about the state’s political geography compels us to draw a plan with a massive and entrenched partisan skew.

To this end, I will be comparing the following plans: the enacted plans SL-174, SL-173, and SL-175 and a corresponding set of alternative plans labeled NCLCV-Cong, NCLCV-Sen, and NCLCV-House (proposed by plaintiffs who include the North Carolina League of Conservation Voters).

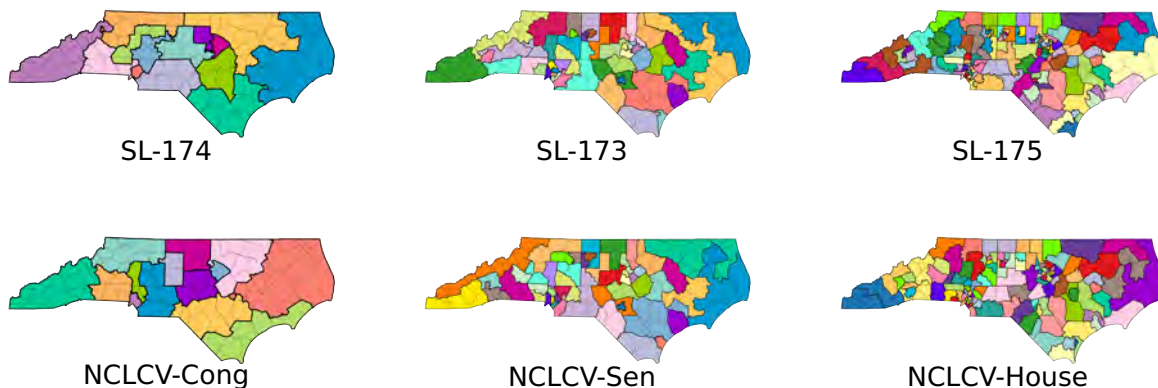


Figure 1: The six plans under discussion in this affidavit.

2 Traditional districting principles

Principles that are relevant to North Carolina redistricting include the following.

- **Population balance.** The standard interpretation of *One Person, One Vote* for Congressional districts is that districts should be fine-tuned so that their total Census population deviates by no more than one person from any district to any other.

There is more latitude with legislative districts; they typically vary top-to-bottom by no more than 10% of ideal district size. In North Carolina, the Whole County Provisions make it very explicit that 5% deviation must be tolerated if it means preserving more counties intact.

All six plans have acceptable population balance.

Population deviation				
	Max Positive Deviation	District	Max Negative Deviation	District
SL-174	0	(eight districts)	−1	(six districts)
NCLCV-Cong	0	(eight districts)	−1	(six districts)
SL-173	10,355 (4.960%)	5	−10,434 (4.997%)	13,18
NCLCV-Sen	10,355 (4.960%)	5	−10,427 (4.994%)	15
SL-175	4250 (4.885%)	18	−4189 (4.815%)	112
NCLCV-House	4341 (4.990%)	82	−4323 (4.969%)	87

Table 1: Deviations are calculated with respect to the rounded ideal district populations of 745,671 for Congress, 208,788 for Senate, and 86,995 for House.

- **Minority electoral opportunity.** Minority groups’ opportunity to elect candidates of choice is protected by both state and federal law. A detailed assessment of opportunity must hinge not on the demographics of the districts but on electoral history and an assessment of polarization patterns. That is not the focus of the current affidavit. Instead we make the brief note that it is important to avoid the conflation of *majority-minority districts* with *effective districts* for a minority group. An involved analysis of voting patterns—necessarily incorporating both primary and general elections to ensure that candidates of choice can be successfully nominated and elected—will frequently reveal that districts can be effective at demographic levels well below 50% of voting-age population or citizen voting-age population (VAP and CVAP, respectively). For instance, in [3], my co-authors and I drew an illustrative plan for Texas congressional districting in which some parts of the state had districts that were shown to reliably elect Black candidates of choice with BCVP as low as 28.6%; by contrast, there are other parts of Texas where a 40% BCVP district is less consistently effective. In a Louisiana case study, we found somewhat different patterns of human and political geography, producing numerous examples of Congressional-sized districts with 55% BCVP in some parts of the state that are nonetheless marginal in terms of opportunity for Black voters to elect candidates of choice.

In North Carolina, taking the crossover voting patterns of White, Latino, and Asian voters into account, I note that a district with BCVP in the low to mid 30s can often be effective for Black voters—but there is no demographic shortcut to a full examination of primary and general election history.

- **Contiguity.** All six plans are contiguous; for each district, it is possible to transit from any part of the district to any other part through a sequence of census blocks that share boundary segments of positive length. As is traditional in North Carolina, contiguity through water is accepted.

- **Compactness.** The two compactness metrics most commonly appearing in litigation are the *Polsby-Popper score* and the *Reock score*. Polsby-Popper is the name given in redistricting to a metric from ancient mathematics: the isoperimetric ratio comparing a region's area to its perimeter via the formula $4\pi A/P^2$. Higher scores are considered more compact, with circles uniquely achieving the optimum score of 1. Reock is a different measurement of how much a shape differs from a circle: it is computed as the ratio of a region's area to that of its circumcircle, defined as the smallest circle in which the region can be circumscribed. From this definition, it is clear that it too is optimized at a value of 1, which is achieved only by circles.

These scores depend on the contours of a district and have been criticized as being too dependent on map projections or on cartographic resolution [1, 2]. Recently, some mathematicians have argued for using discrete compactness scores, taking into account the units of Census geography from which the district is built. The most commonly cited discrete score for districts is the *cut edges score*, which counts how many adjacent pairs of geographical units receive different district assignments. In other words, cut edges measures the "scissors complexity" of the districting plan: how much work would have to be done to separate the districts from each other? Plans with a very intricate boundary would require many separations. This score improves on the contour-based scores by better controlling for factors like coastline and other natural boundaries, and by focusing on the units actually available to redistricters rather than treating districts like free-form Rorschach blots.

The alternative plans are significantly more compact than the enacted plans in all three compactness metrics.

Compactness

	block cut edges (lower is better)	average Polsby-Popper (higher is better)	average Reock (higher is better)
SL-174	5194	0.303	0.381
NCLCV-Cong	4124	0.383	0.444
SL-173	9702	0.342	0.402
NCLCV-Sen	9249	0.369	0.423
SL-175	16,182	0.351	0.419
NCLCV-House	13,963	0.414	0.456

Table 2: Comparing compactness scores via one discrete and two contour-based metrics.

- **Respect for political subdivisions.** For legislative redistricting, North Carolina has one of the strongest requirements for county consideration of any state in the nation. In my understanding, courts have interpreted the Whole County Provisions as follows.
 - First, if any county is divisible into a whole number of districts that will be within $\pm 5\%$ of ideal population, then it must be subdivided accordingly without districts crossing into other counties.
 - Next, seek any contiguous grouping of two counties that is similarly divisible into a whole number of districts.
 - Repeat for groupings of three, and so on, until all counties are accounted for.

A complete set of solutions is described in detail in the white paper of Mattingly et al.—though with the important caveat that the work "does not reflect... compliance with the Voting Rights Act" [4]. Absent a VRA conflict, the 2020 Decennial Census population data dictates that the North Carolina Senate plan must be decomposed into ten single-district fixed clusters and seven multi-district fixed clusters (comprising 2, 2, 3, 3, 4, 6, and 6

districts, respectively). It has four more areas in which there is a choice of groupings. In all, there are sixteen different possible clusterings for Senate, each comprising 26 county clusters. The House likewise has 11 single-district fixed clusters and 22 multi-district fixed clusters (with two to thirteen districts per cluster), together with three more areas with a choice of groupings. In all, the House has only eight acceptable clusterings, each comprising 40 county clusters. Again, it is important to note that VRA compliance may present a compelling reason to select some clusterings and reject others.

Once clusters have been formed, there are more rules about respecting county lines within clusters. The legal language is again explicit: "[T]he resulting interior county lines created by any such groupings may be crossed or traversed in the creation of districts within said multi-county grouping but only to the extent necessary" to meet the $\pm 5\%$ population standard for districts. To address this, I have counted the *county traversals* in each plan, i.e., the number of times a district crosses between adjacent counties within a grouping.

Table 3 reflects the county integrity metric that is most relevant at each level: the enacted congressional plan splits 11 counties into 25 pieces while the alternative plan splits 13, but splits no county three ways. (The enacted plans unnecessarily split three counties into three pieces.) In the legislative plans, the law specifies traversals as the fundamental integrity statistic.

The alternative plans are comparable to the enacted plans, or sometimes far superior, in each of these key metrics regarding preservation of political boundaries.

County and municipality preservation

# county pieces		# traversals	
SL-174	25	SL-173	97
NCLCV-Cong	26	NCLCV-Sen	89
		SL-175	69
		NCLCV-House	66

# municipal pieces	
SL-174	90
NCLCV-Cong	58
SL-173	152
NCLCV-Sen	125
SL-175	292
NCLCV-House	201

Table 3: Comparing the plans' conformance to political boundaries.

I will briefly mention several additional redistricting principles.

- **Communities of interest.** In North Carolina, there was no sustained effort by the state or by community groups to formally collect community of interest (COI) maps, to my knowledge. Without this, it is difficult to produce a suitable metric.
- **Cores of prior districts.** In some states, there is statutory guidance to seek districting plans that preserve the cores of prior districts. In North Carolina, this is not a factor in the constitution, in statute, or in case law. In addition, attention to core preservation would be prohibitively difficult in the Senate and House because of the primacy of the Whole County Provisions, which forces major changes to the districts simply as a consequence of fresh population numbers.

- **Incumbent pairing.** In 2017, the North Carolina legislative redistricting committee listed "incumbency protection" as a goal in their itemization of principles. In 2021, this was softened to the statement that "Member residence may be considered" in the drawing of districts. I have counted the districts in each plan that contain more than one incumbent address; these are sometimes colorfully called "double-bunked" districts. For this statistic, it is not entirely clear whether a high or low number is preferable. When a plan remediates a gerrymandered predecessor, we should not be surprised if it ends up pairing numerous incumbents.

Double-bunking

	# districts pairing incumbents
SL-174	3
NCLCV-Cong	1
SL-173	6
NCLCV-Sen	9
SL-175	7
NCLCV-House	15

Table 4: For Congress and Senate, the enacted and alternative plans are comparable; at the House level, the alternative plan has more double-bunking. *Note: These numbers were calculated using the most accurate incumbent addresses that have been provided to me.*

3 Partisan fairness

3.1 Abstract partisan fairness

There are many notions of partisan fairness that can be found in the scholarly literature and in redistricting practitioner guides and software. Most of them are numerical, in the sense that they address *how a certain share of the vote should be translated to a share of the seats* in a state legislature or Congressional delegation.

The numerical notions of partisan fairness all tend to agree on one central point: an electoral climate with a 50-50 split in partisan preference should produce a roughly 50-50 representational split. North Carolina voting has displayed a partisan split staying consistently close to even between the two major parties over the last ten years, but the plans released by the General Assembly after the 2010 census were very far from realizing the ideal of converting even voting to even representation. This time, with a 14th seat added to North Carolina's apportionment, an exactly even seat outcome is possible. But the new enacted plans, like the plans from ten years ago, are not conducive to even representation.

3.2 Geography and fairness

However, some scholars have argued that this ideal (that even vote preferences should translate to even representation) ignores the crucial *political geography*—the location of votes for each party, and not just the aggregate preferences, has a major impact on redistricting outcomes. In [5], my co-authors and I gave a vivid demonstration of the impacts of political geography in Massachusetts: we showed that for a ten-year span of observed voting patterns, even though Republicans tended to get over one-third of the statewide vote, it was impossible to draw a single Congressional district with a Republican majority. That is, the geography of Massachusetts Republicans locked them out of Congressional representation. It is therefore not reasonable to charge the Massachusetts legislature with gerrymandering for having produced maps which yielded all-Democratic delegations; they could not have done otherwise.

In North Carolina, this is not the case. The alternative plans demonstrate that it is possible to produce maps that give the two major parties a roughly equal opportunity to elect their candidates. These plans are just examples among many thousands of plausible maps that convert voter preferences to far more even representation by party. In Congressional redistricting, the geography is easily conducive to a seat share squarely in line with the vote share. In Senate and House plans, even following the strict detail of the Whole County Provisions, there are likewise many alternatives giving a seat share for each party that falls, in aggregate, within a few percentage points of the vote share across a large set of elections.

The clear conclusion is that the political geography of North Carolina today does not obstruct the selection of a map that treats the parties equally and fairly.

3.3 Translating votes to seats

The enacted plans behave as though they are built to resiliently safeguard electoral advantage for Republican candidates. We can examine this effect without invoking assumptions like "uniform partisan swing" that impose counterfactual voting conditions; instead, we will use the rich observed dataset of 52 statewide party-ID general elections in North Carolina in the last ten years. 29 of these are elections for Council of State (ten offices elected three times, with the Attorney General race uncontested in 2012), three presidential races, three for U.S. Senate, and 17 judicial races since mid-decade, when those became partisan contests. See Table 6 for more detail on the election dataset.

I will sometimes focus on the smaller set of better-known "up-ballot" races: in order, the first five to appear on the ballot are the contests for President, U.S. Senator, Governor, Lieutenant Governor, and Attorney General. Together these occurred 14 times in the last Census cycle.

	Up-ballot generals (14)		All generals (52)	
	D vote share	D seat share	D vote share	D seat share
SL-174		.2908		.3118
NCLCV-Cong	.4883	.4796	.4911	.4931
SL-173		.3957		.4065
NCLCV-Sen	.4883	.4557	.4911	.4592
SL-175		.3994		.4080
NCLCV-House	.4883	.4649	.4911	.4684

Table 5: Comparing overall fidelity of representation to the voting preferences of the electorate. Vote shares are reported with respect to the major-party vote total.

To understand how the enacted plans create major shortfalls for Democratic representation, we will overlay the plans with voting patterns from individual elections in the past Census cycle. As we will see, the enacted Congressional plan (SL-174) shows a remarkable lack of responsiveness, giving 10–4 partisan outcomes across a wide range of recent electoral conditions, meaning that 10 Republicans and only 4 Democrats would represent North Carolina in Congress. The alternative plan (NCLCV-Cong) is far more faithful to the vote share, far more responsive, and tends to award more seats to the party with more votes.

The top of Figure 2 shows this dynamic in the three Presidential contests in the last Census cycle, with a Democratic vote share (pink box) between 48% and 50% of the major-party total each time. For a contest that is so evenly divided, we would expect a fair map to have 6, 7, or 8 out of 14 districts favoring each party. The alternative Congressional map NCLCV-Cong does just that, while the enacted plan SL-174 has just 4 out of 14 Democratic-majority districts each time (green and maroon circles). The alternative plan is far more successful at reflecting the even split of voter preferences. Below the initial explainer, simplified versions of the same type of graphic are presented for all five up-ballot races. Figure 3 compares legislative maps in the same fashion. Next, Figure 4 returns to the full 52-election dataset to give the big picture of entrenched partisan advantage in the enacted plans.

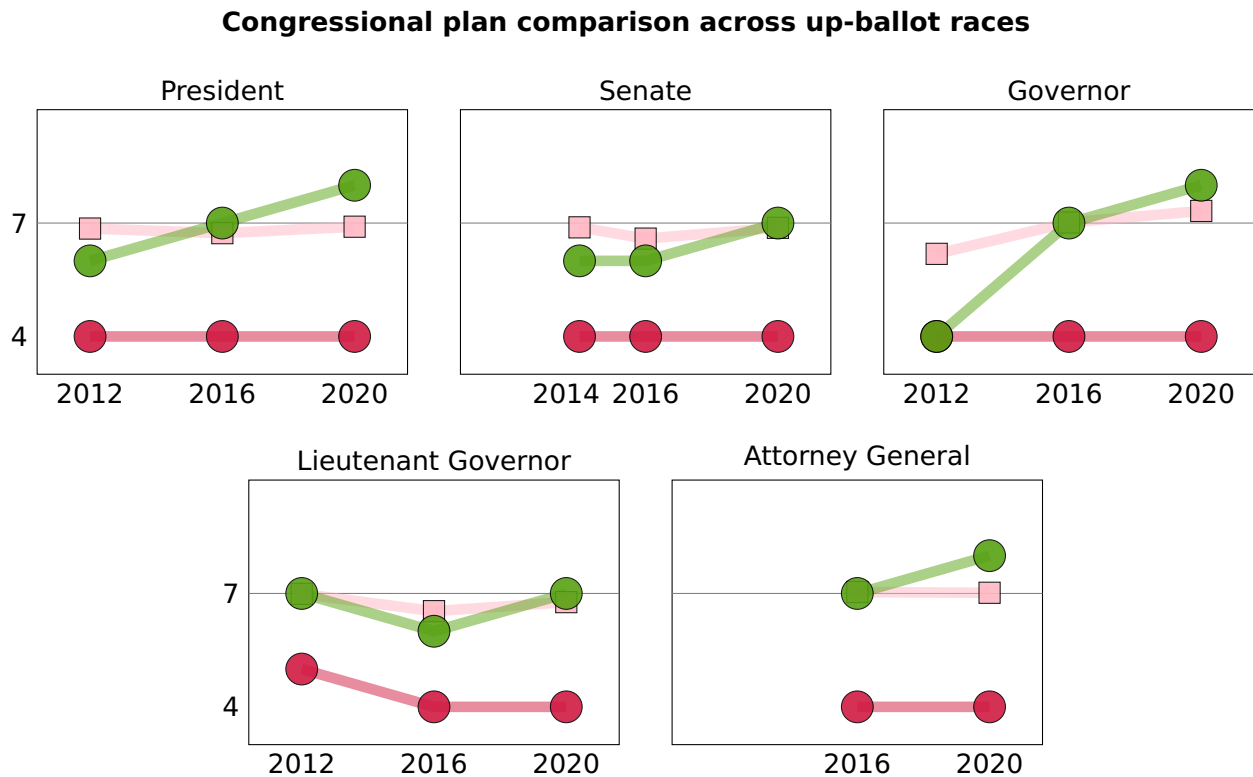
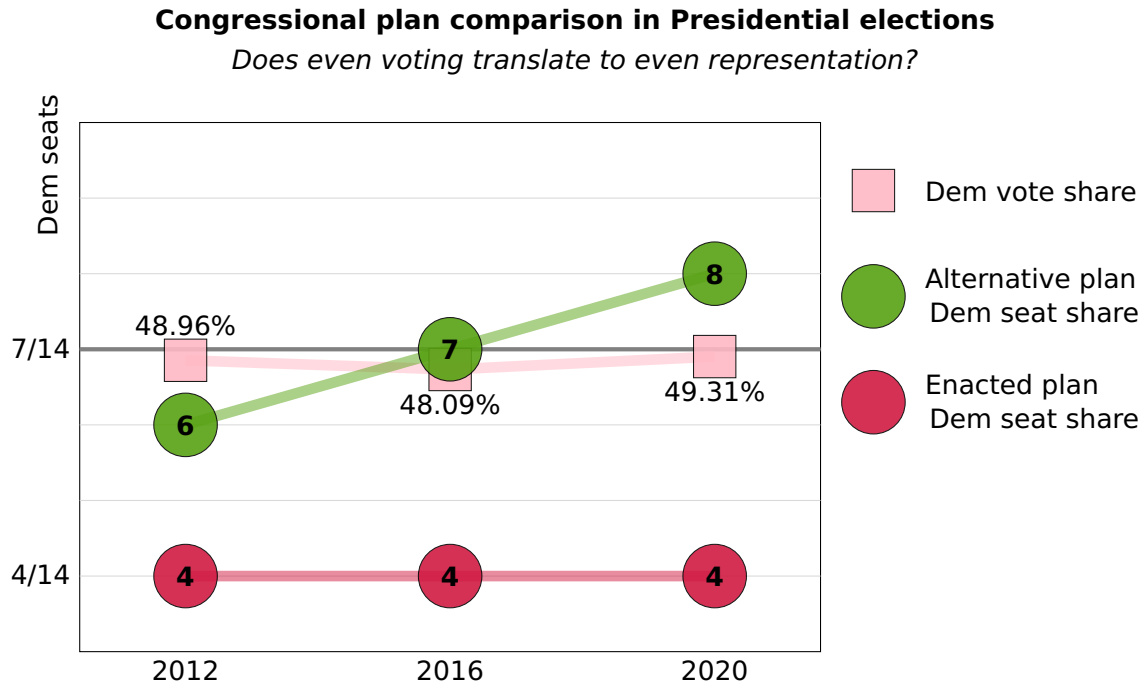


Figure 2: For up-ballot general election contests across the previous Census cycle, we can compare the seat share under the enacted Congressional plan SL-174 (maroon) and the seat share under the alternative Congressional plan NCLCV-Cong (green) to the vote share (pink) for Democratic candidates. At top is a detailed look at the presidential contests; this is repeated below, alongside the other four up-ballot offices. The 50% line is marked each time.

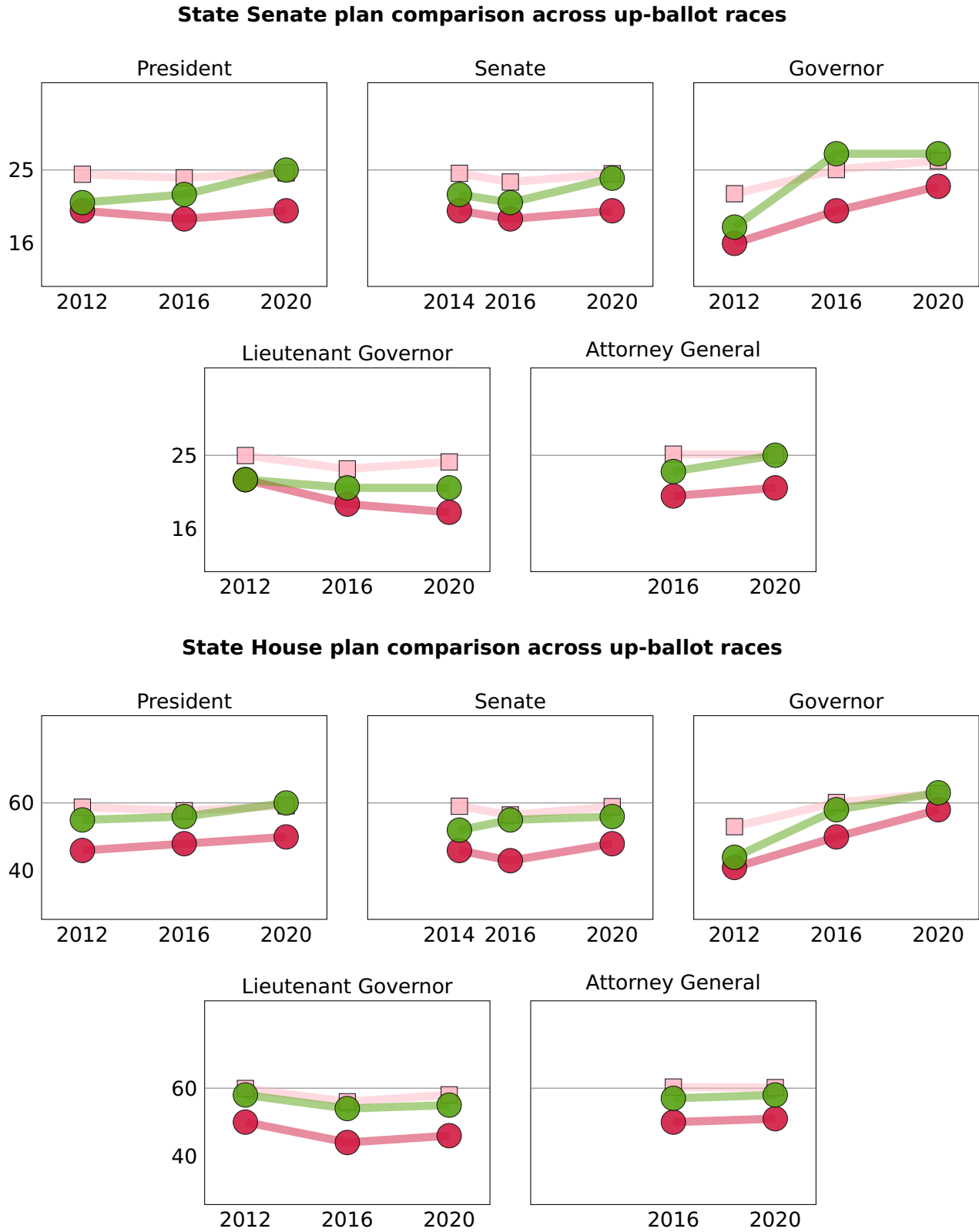


Figure 3: Legislative plans tested against voting patterns from up-ballot elections. The enacted plans SL-173 and SL-175 are shown in maroon. The alternative plans NCLCV-Sen and NCLCV-House, in green, have seat shares tracking much closer to the nearly even voting preferences.

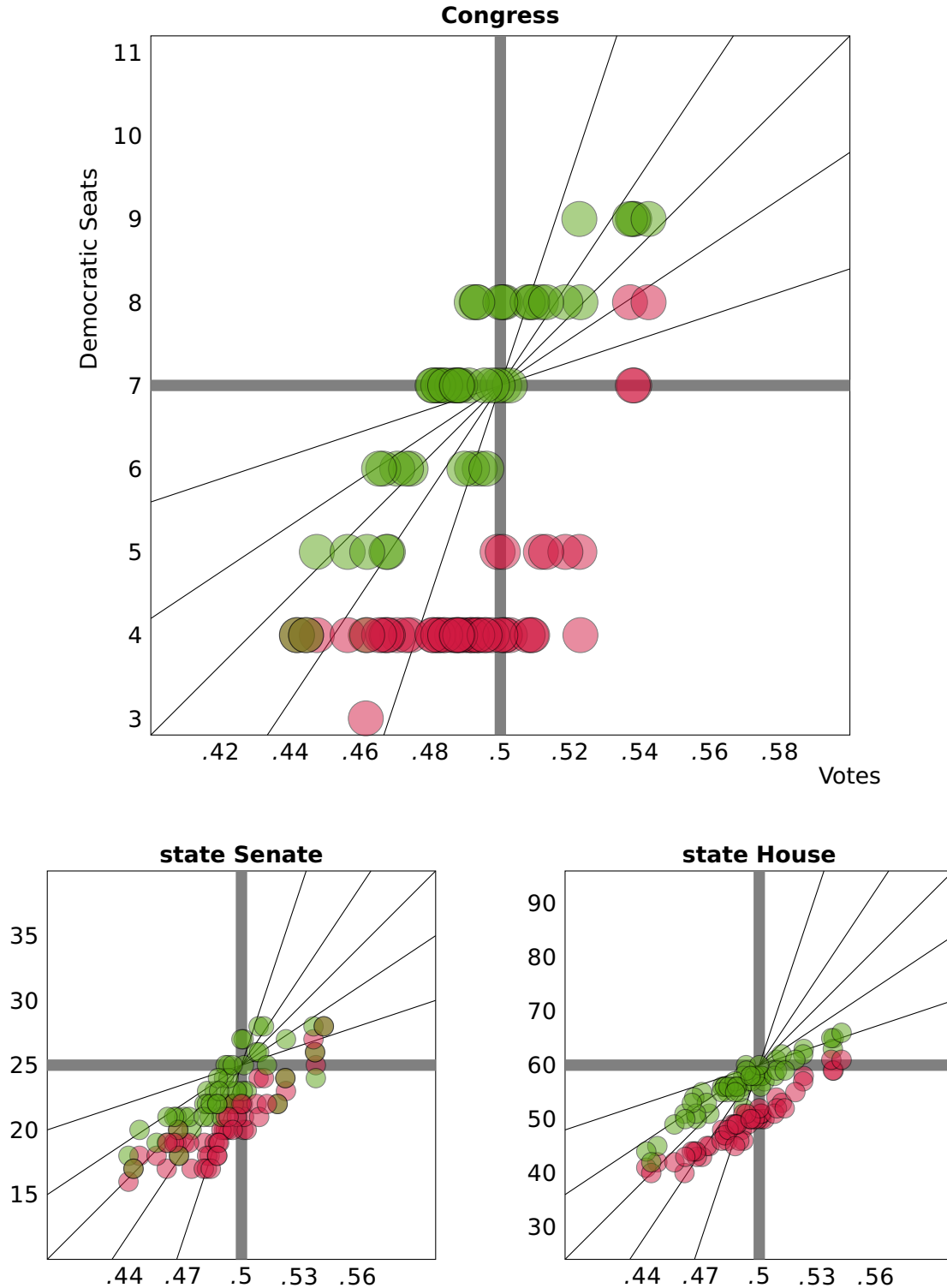


Figure 4: On a seats-vs.-votes plot, the election results for the six maps are shown for 52 general election contests in the last decade; each colored dot is plotted as the coordinate pair (vote share, seat share). The diagonals show various lines of *responsiveness* that pivot around the central point of fairness: half of the votes securing half of the seats. The Congressional comparison is at top, followed by Senate and House. The enacted plans are shown in **maroon** and the alternative plans in **green**.

3.4 Swing districts and competitive contests

Another way to understand the electoral properties of districting plans is to investigate how many districts always give the same partisan result over a suite of observed electoral conditions, and how many districts can "swing" between the parties. Figure 5 compares the six plans across the up-ballot elections. The enacted plans lock in large numbers of always-Republican seats. In the Senate and House, nearly half the seats are locked down for Republicans. In the Congressional plan, it's well over half. This provides another view from which the NCLCV plans provide attractive alternatives.

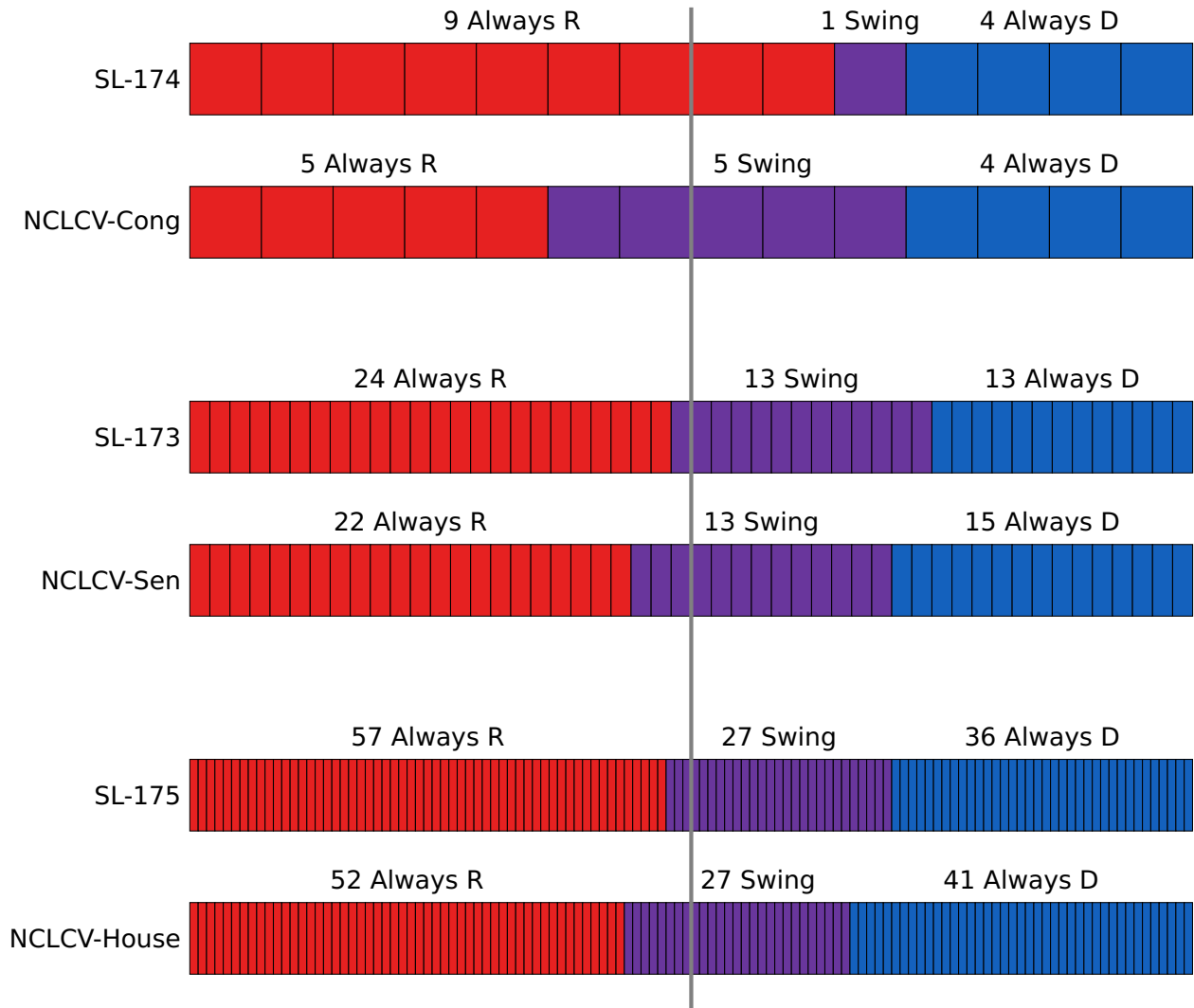


Figure 5: These visuals show the breakdown of seats that always have a Republican winner, always have a Democratic winner, or are sometimes led by each party across the 14 up-ballot elections over the previous Census cycle. The 50-50 split is marked.

One more measure of partisan fairness, frequently referenced in the public discourse, is the tendency of a districting plan to promote close or competitive contests. We close with a comparison of the enacted and alternative plans that displays the number of times across the full dataset of 52 elections that a contest had a partisan margin of closer than 10 points, 6 points, or 2 points, respectively. This can occur up to $14 \cdot 52 = 728$ times in Congressional maps, $50 \cdot 52 = 2600$ times in state Senate maps, and $120 \cdot 52 = 6240$ times in state House

maps. The figures below show horizontal rules at every 10% interval of the total number of possible competitive contests; we can see, for instance, that the alternative Congressional plan has contests within a 10-point margin more than 40% of the time.

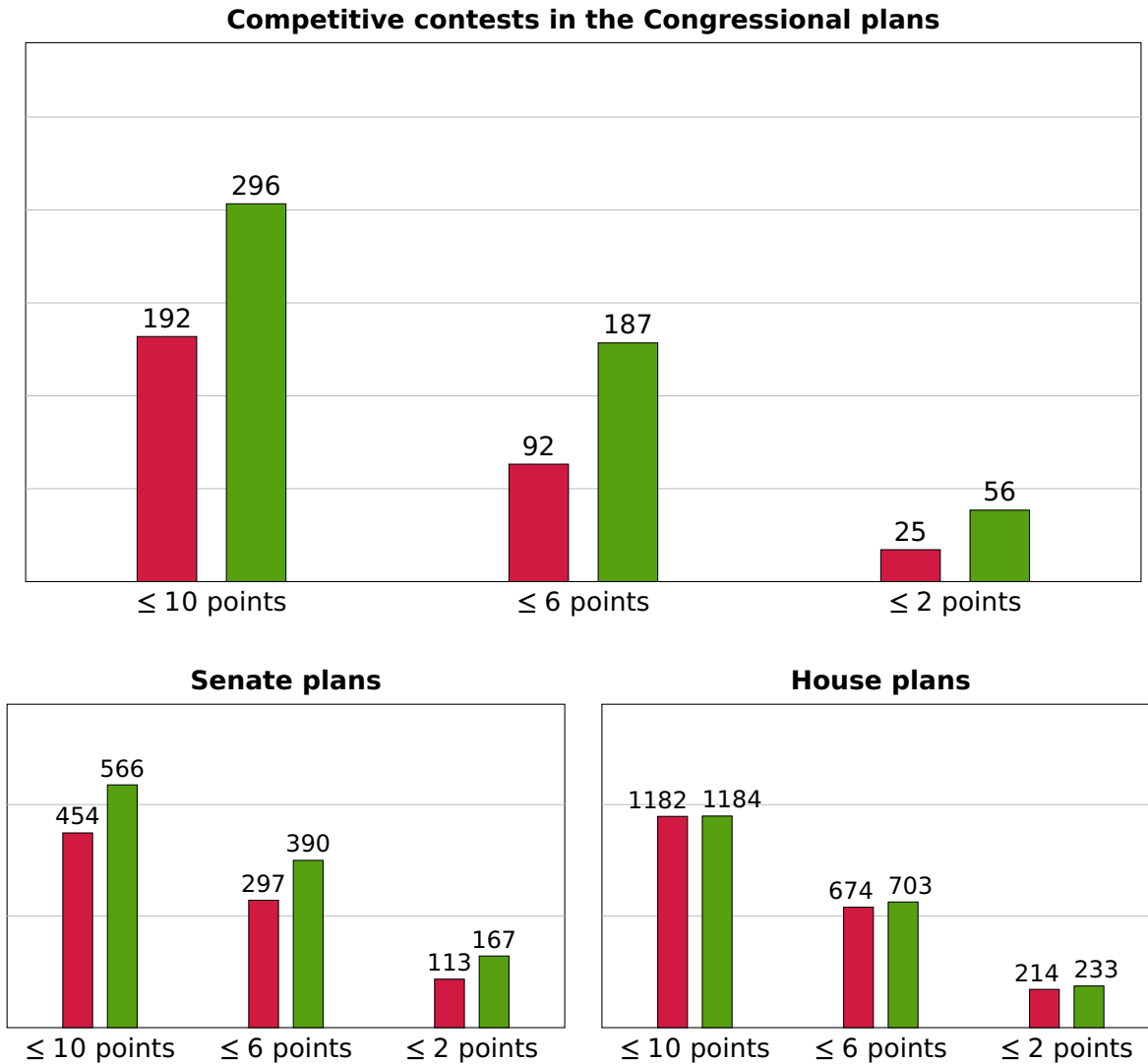


Figure 6: These bar graphs show the number of competitive contests for the enacted plans (maroon) and the alternative plans (green). In each plot, we consider increasingly restrictive definitions of "competitive" from left to right, counting districts in which the major-party vote split is closer than 45-55, 47-53, and 49-51, respectively.

4 Conclusion

North Carolina is a very "purple" state. In 38 out of the 52 contests in our dataset, the statewide partisan outcome is within a 6-point margin: 47-53 or closer. We can make a striking observation by laying our six plans over the vote patterns.

	D Vote Share	SL-174	NCLCV-Cong	SL-173	NCLCV-Sen	SL-175	NCLCV-House
GOV12	0.4418	4	4	16	18	41	44
AGC16	0.4444	4	4	17	17	40	42
LAC16	0.4475	4	5	18	20	42	45
JHU16	0.4563	4	5	18	19	42	49
AGC20	0.4615	3	4	17	19	40	51
JZA16	0.4619	4	5	19	21	43	50
JDI16	0.4653	4	6	19	21	44	53
LTG16	0.4665	4	6	19	21	44	54
LAC12	0.4674	4	5	20	20	44	51
AGC12	0.4678	4	5	18	18	43	50
SEN16	0.4705	4	6	19	21	43	55
TRS16	0.4730	4	6	19	21	45	53
TRS20	0.4743	4	6	17	20	45	51
JA620	0.4806	4	7	17	21	46	55
PRS16	0.4809	4	7	19	22	48	56
JA420	0.4822	4	7	17	22	47	56
INC20	0.4823	4	7	18	23	47	56
LTG20	0.4836	4	7	18	21	46	55
JA720	0.4842	4	7	17	22	48	56
SUP20	0.4862	4	7	19	23	49	56
JA520	0.4874	4	7	18	22	49	57
JA218	0.4876	4	7	18	22	45	55
JS420	0.4879	4	7	19	24	49	56
J1320	0.4885	4	7	19	23	49	56
PRS12	0.4897	4	6	20	21	46	55
SEN20	0.4910	4	7	20	24	48	56
LAC20	0.4918	4	8	21	25	51	58
SEN14	0.4919	4	6	20	22	46	52
PRS20	0.4932	4	8	20	25	50	60
JS220	0.4934	4	8	21	24	51	59
SUP16	0.4941	4	6	22	23	49	57
JS118	0.4955	4	7	20	25	50	58
INC16	0.4960	4	6	22	22	50	57
JST16	0.4976	4	7	21	23	50	58
LTG12	0.4992	5	7	22	22	50	58
JS120	0.5000	4	8	22	27	52	60
AUD16	0.5007	5	8	22	23	51	56
GOV16	0.5011	4	7	20	27	50	58
ATG20	0.5013	4	8	21	25	51	58
ATG16	0.5027	4	7	20	23	50	57
JA118	0.5078	4	8	22	26	51	58
AUD20	0.5088	4	8	24	28	54	61
JA318	0.5091	4	8	21	26	52	59
SOS20	0.5116	5	8	24	28	53	62
JGE16	0.5131	5	8	22	25	52	59
INC12	0.5186	5	8	22	22	55	61
SOS16	0.5226	5	9	24	24	57	62
GOV20	0.5229	4	8	23	27	58	63
AUD12	0.5371	8	9	27	28	61	65
SOS12	0.5379	7	9	26	26	59	63
TRS12	0.5383	7	9	25	24	59	65
SUP12	0.5424	8	9	28	28	61	66

Table 6: 52 general elections, sorted from lowest to highest Democratic share. Election codes have a three-character prefix and a two-digit suffix designating the office and the election year, respectively. AGC = Agriculture Commissioner; ATG = Attorney General; AUD = Auditor; GOV = Governor; INC = Insurance Commissioner; LAC = Labor Commissioner; PRS = President; SEN = Senator; SOS = Secretary of State; SUP = Superintendent of Schools; TRS = Treasurer. The prefix JA* refers to judicial elections to the Court of Appeals (so that, for instance, JA118 is the election to the Seat 1 on the Court of Appeals in 2018), those beginning with JS* refer to elections to the state Supreme Court. All other J* prefixes refer to an election to replace a specific judge on the Court of Appeals.

The three enacted plans combine with those 38 relatively even vote patterns to produce 114 outcomes. Every single pairing of an enacted plan with a close statewide contest—a complete sweep of 114 opportunities—gives an *outright Republican majority* of seats. All three enacted plans will lock in an extreme, resilient, and unnecessary advantage for one party.

By every measure considered above that corresponds to a clear legal or good-government redistricting goal or value, the alternative plans meet or exceed the performance of the enacted plans. It is therefore demonstrated to be possible, without any cost to the redistricting principles in play, to select maps that are far fairer to the voters of North Carolina.

References

- [1] Assaf Bar-Natan, Lorenzo Najt, and Zachary Schutzmann, *The gerrymandering jumble: map projections permute districts' compactness scores*. Cartography and Geographic Information Science, Volume 47, Issue 4, 2020, 321–335.
- [2] Richard Barnes and Justin Solomon, *Gerrymandering and Compactness: Implementation Flexibility and Abuse*. Political Analysis, Volume 29, Issue 4, October 2021, 448–466.
- [3] Amariah Becker, Moon Duchin, Dara Gold, and Sam Hirsch, *Computational redistricting and the Voting Rights Act*. Election Law Journal.
Available at <https://www.liebertpub.com/doi/epdf/10.1089/elj.2020.0704>
- [4] Christopher Cooper, Blake Esselstyn, Gregory Herschlag, Jonathan Mattingly, and Rebecca Tippet, *NC General Assembly County Clusterings from the 2020 Census*.
<https://sites.duke.edu/quantifyinggerrymandering/files/2021/08/countyClusters2020.pdf>
- [5] Moon Duchin, Taissa Gladkova, Eugene Henninger-Voss, Heather Newman, and Hannah Wheelen, *Locating the Representational Baseline: Republicans in Massachusetts*. Election Law Journal, Volume 18, Number 4, 2019, 388–401.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of November, 2021.

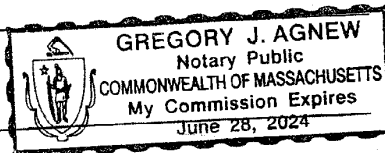
Moon Duchin
Moon Duchin

Sworn and subscribed before me
this the 16 of November, 2021.

M. Agnew
Notary Public

Name: _____

My Commission Expires: _____



Moon Duchin

moon.duchin@tufts.edu - mduchin.math.tufts.edu
Mathematics · STS · Tisch College of Civic Life | Tufts University

Education

University of Chicago Mathematics Advisor: Alex Eskin	MS 1999, PhD 2005 <i>Dissertation: Geodesics track random walks in Teichmüller space</i>
Harvard University Mathematics and Women's Studies	BA 1998

Appointments

Tufts University Professor of Mathematics Assistant Professor, Associate Professor	2021— 2011–2021
<i>Director</i> Program in Science, Technology, & Society (on leave 2018–2019)	2015–2021
<i>Principal Investigator</i> MGGG Redistricting Lab	2017—
<i>Senior Fellow</i> Tisch College of Civic Life	2017—
University of Michigan Assistant Professor (postdoctoral)	2008–2011
University of California, Davis NSF VIGRE Postdoctoral Fellow	2005–2008

Research Interests

Data science for civil rights, computation and governance, elections, geometry and redistricting.
Science, technology, and society, science policy, technology and law.
Random walks and Markov chains, random groups, random constructions in geometry.
Large-scale geometry, metric geometry, isoperimetric inequalities.
Geometric group theory, growth of groups, nilpotent groups, dynamics of group actions.
Geometric topology, hyperbolicity, Teichmüller theory.

Awards & Distinctions

Research Professor - MSRI Program in Analysis and Geometry of Random Spaces	Spring 2022
Guggenheim Fellow	2018
Radcliffe Fellow - Evelyn Green Davis Fellowship	2018–2019
Fellow of the American Mathematical Society	elected 2017
NSF C-ACCEL (PI) - Harnessing the Data Revolution: Network science of Census data	2019–2020
NSF grants (PI) - CAREER grant and three standard Topology grants	2009–2022
Professor of the Year , Tufts Math Society	2012–2013
AAUW Dissertation Fellowship	2004–2005
NSF Graduate Fellowship	1998–2002
Lawrence and Josephine Graves Prize for Excellence in Teaching (U Chicago)	2002
Robert Fletcher Rogers Prize (Harvard Mathematics)	1995–1996

Mathematics Publications & Preprints

The (homological) persistence of gerrymandering

Foundations of Data Science, online first. (with Thomas Needham and Thomas Weighill)

You can hear the shape of a billiard table: Symbolic dynamics and rigidity for flat surfaces

Commentarii Mathematici Helvetici, to appear. arXiv:1804.05690

(with Viveka Erlandsson, Christopher Leininger, and Chandrika Sadanand)

Conjugation curvature for Cayley graphs

Journal of Topology and Analysis, online first. (with Assaf Bar-Natan and Robert Kropholler)

A reversible recombination chain for graph partitions

Preprint. (with Sarah Cannon, Dana Randall, and Parker Rule)

Recombination: A family of Markov chains for redistricting

Harvard Data Science Review. Issue 3.1, Winter 2021. online. (with Daryl DeFord and Justin Solomon)

Census TopDown: The impact of differential privacy on redistricting

2nd Symposium on Foundations of Responsible Computing (FORC 2021), 5:1–5:22. online.

(with Aloni Cohen, JN Matthews, and Bhushan Suwal)

Stars at infinity in Teichmüller space

Geometriae Dedicata, Volume 213, 531–545 (2021). (with Nate Fisher) arXiv:2004.04321

Random walks and redistricting: New applications of Markov chain Monte Carlo

(with Daryl DeFord) For edited volume, Political Geometry. Under contract with Birkhäuser.

Mathematics of nested districts: The case of Alaska

Statistics and Public Policy. Vol 7, No 1 (2020), 39–51. (w/ Sophia Caldera, Daryl DeFord, Sam Gutekunst, & Cara Nix)

A computational approach to measuring vote elasticity and competitiveness

Statistics and Public Policy. Vol 7, No 1 (2020), 69–86. (with Daryl DeFord and Justin Solomon)

The Heisenberg group is pan-rational

Advances in Mathematics **346** (2019), 219–263. (with Michael Shapiro)

Random nilpotent groups I

IMRN, Vol 2018, Issue 7 (2018), 1921–1953. (with Matthew Cordes, Yen Duong, Meng-Che Ho, and Ayla Sánchez)

Hyperbolic groups

chapter in *Office Hours with a Geometric Group Theorist*, eds. M.Clay, D.Margalit, Princeton U Press (2017), 177–203.

Counting in groups: Fine asymptotic geometry

Notices of the American Mathematical Society **63**, No. 8 (2016), 871–874.

A sharper threshold for random groups at density one-half

Groups, Geometry, and Dynamics **10**, No. 3 (2016), 985–1005.

(with Katarzyna Jankiewicz, Shelby Kilmer, Samuel Lelièvre, John M. Mackay, and Ayla Sánchez)

Equations in nilpotent groups

Proceedings of the American Mathematical Society **143** (2015), 4723–4731. (with Hao Liang and Michael Shapiro)

Statistical hyperbolicity in Teichmüller space

Geometric and Functional Analysis, Volume 24, Issue 3 (2014), 748–795. (with Howard Masur and Spencer Dowdall)

Fine asymptotic geometry of the Heisenberg group

Indiana University Mathematics Journal **63** No. 3 (2014), 885–916. (with Christopher Mooney)

Pushing fillings in right-angled Artin groups

Journal of the LMS, Vol 87, Issue 3 (2013), 663–688. (with Aaron Abrams, Noel Brady, Pallavi Dani, and Robert Young)

Spheres in the curve complex

In the Tradition of Ahlfors and Bers VI, Contemp. Math. **590** (2013), 1–8. (with Howard Masur and Spencer Dowdall)

The sprawl conjecture for convex bodies

Experimental Mathematics, Volume 22, Issue 2 (2013), 113–122. (with Samuel Lelièvre and Christopher Mooney)

Filling loops at infinity in the mapping class group

Michigan Math. J., Vol 61, Issue 4 (2012), 867–874. (with Aaron Abrams, Noel Brady, Pallavi Dani, and Robert Young)

The geometry of spheres in free abelian groups

Geometriae Dedicata, Volume 161, Issue 1 (2012), 169–187. (with Samuel Lelièvre and Christopher Mooney)

Statistical hyperbolicity in groups

Algebraic and Geometric Topology **12** (2012) 1–18. (with Samuel Lelièvre and Christopher Mooney)

Length spectra and degeneration of flat metrics

Inventiones Mathematicae, Volume 182, Issue 2 (2010), 231–277. (with Christopher Leininger and Kasra Rafi)

Divergence of geodesics in Teichmüller space and the mapping class group

Geometric and Functional Analysis, Volume 19, Issue 3 (2009), 722–742. (with Kasra Rafi)

Curvature, stretchiness, and dynamics

In the Tradition of Ahlfors and Bers IV, Contemp. Math. **432** (2007), 19–30.

Geodesics track random walks in Teichmüller space

PhD Dissertation, University of Chicago 2005.

Science, Technology, Law, and Policy Publications & Preprints

Models, Race, and the Law

Yale Law Journal Forum, Vol. 130 (March 2021). Available online. (with Doug Spencer)

Computational Redistricting and the Voting Rights Act

Election Law Journal, Available online. (with Amariah Becker, Dara Gold, and Sam Hirsch)

Discrete geometry for electoral geography

Preprint. (with Bridget Eileen Tenner) arXiv:1808.05860

Implementing partisan symmetry: Problems and paradoxes

Political Analysis, to appear. (with Daryl DeFord, Natasha Dhamankar, Mackenzie McPike, Gabe Schoenbach, and Ki-Wan Sim) arXiv:2008:06930

Clustering propensity: A mathematical framework for measuring segregation

Preprint. (with Emilia Alvarez, Everett Meike, and Marshall Mueller; appendix by Tyler Piazza)

Locating the representational baseline: Republicans in Massachusetts

Election Law Journal, Volume 18, Number 4, 2019, 388–401.

(with Taissa Gladkova, Eugene Henninger-Voss, Ben Klingensmith, Heather Newman, and Hannah Wheelen)

Redistricting reform in Virginia: Districting criteria in context

Virginia Policy Review, Volume XII, Issue II, Spring 2019, 120–146. (with Daryl DeFord)

Geometry v. Gerrymandering

The Best Writing on Mathematics 2019, ed. Mircea Pitici. Princeton University Press.
reprinted from Scientific American, November 2018, 48–53.

Gerrymandering metrics: How to measure? What's the baseline?

Bulletin of the American Academy for Arts and Sciences, Vol. LXII, No. 2 (Winter 2018), 54–58.

Rebooting the mathematics of gerrymandering: How can geometry track with our political values?

The Conversation (online magazine), October 2017. (with Peter Levine)

A formula goes to court: Partisan gerrymandering and the efficiency gap

Notices of the American Mathematical Society **64** No. 9 (2017), 1020–1024. (with Mira Bernstein)

International mobility and U.S. mathematics

Notices of the American Mathematical Society **64**, No. 7 (2017), 682–683.

Graduate Advising in Mathematics

Nate Fisher (PhD 2021), Sunrose Shrestha (PhD 2020), Ayla Sánchez (PhD 2017),
Kevin Buckles (PhD 2015), Mai Mansouri (MS 2014)

Outside committee member for Chris Coscia (PhD 2020), Dartmouth College

Postdoctoral Advising in Mathematics

Principal supervisor Thomas Weighill (2019–2020)

Co-supervisor Daryl DeFord (MIT 2018–2020), Rob Kropholler (2017–2020), Hao Liang (2013–2016)

Teaching

Courses Developed or Customized

Mathematics of Social Choice | sites.tufts.edu/socialchoice

Voting theory, impossibility theorems, redistricting, theory of representative democracy, metrics of fairness.

History of Mathematics | sites.tufts.edu/histmath

Social history of mathematics, organized around episodes from antiquity to present. Themes include materials and technologies of creation and dissemination, axioms, authority, credibility, and professionalization. In-depth treatment of mathematical content from numeration to cardinal arithmetic to Galois theory.

Reading Lab: Mathematical Models in Social Context | sites.tufts.edu/models

One hr/wk discussion seminar of short but close reading on topics in mathematical modeling, including history of psychometrics; algorithmic bias; philosophy of statistics; problems of model explanation and interpretation.

Geometric Literacy

Module-based graduate topics course. Modules have included: p -adic numbers, hyperbolic geometry, nilpotent geometry, Lie groups, convex geometry and analysis, the complex of curves, ergodic theory, the Gauss circle problem.

Markov Chains (graduate topics course)

Teichmüller Theory (graduate topics course)

Fuchsian Groups (graduate topics course)

Continued Fractions and Geometric Coding (undergraduate topics course)

Mathematics for Elementary School Teachers

Standard Courses

Discrete Mathematics, Calculus I-II-III, Intro to Proofs, Linear Algebra, Complex Analysis, Differential Geometry, Abstract Algebra, Graduate Real Analysis, Mathematical Modeling and Computation

Weekly Seminars Organized

- Geometric Group Theory and Topology
- Science, Technology, and Society Lunch Seminar

Selected Talks and Lectures

Distinguished Plenary Lecture

75th Anniversary Meeting of Canadian Mathematical Society, Ottawa, Ontario

June 2021
online (COVID)

BMC/BAMC Public Lecture

Joint British Mathematics/Applied Mathematics Colloquium, Glasgow, Scotland

April 2021
online (COVID)

AMS Einstein Public Lecture in Mathematics

Southeastern Sectional Meeting of the AMS, Charlottesville, VA

[March 2020]
postponed

Gerald and Judith Porter Public Lecture

AMS-MAA-SIAM, Joint Mathematics Meetings, San Diego, CA

January 2018

Mathematical Association of America Distinguished Lecture

MAA Carriage House, Washington, DC

October 2016

American Mathematical Society Invited Address

AMS Eastern Sectional Meeting, Brunswick, ME

September 2016

Named University Lectures

- Parsons Lecture UNC Asheville	October 2020
- Loeb Lectures in Mathematics Washington University in St. Louis	[March 2020]
- Math, Stats, CS, and Society Macalester College	October 2019
- MRC Public Lecture Stanford University	May 2019
- Freedman Memorial Colloquium Boston University	March 2019
- Julian Clancy Frazier Colloquium Lecture U.S. Naval Academy	January 2019
- Barnett Lecture University of Cincinnati	October 2018
- School of Science Colloquium Series The College of New Jersey	March 2018
- Kieval Lecture Cornell University	February 2018
- G. Milton Wing Lectures University of Rochester	October 2017
- Norman Johnson Lecture Wheaton College	September 2017
- Dan E. Christie Lecture Bowdoin College	September 2017

Math/Computer Science Department Colloquia

- Reed College	Dec 2020	- Université de Neuchâtel	Jun 2016
- Georgetown (CS)	Sept 2020	- Brandeis University	Mar 2016
- Santa Fe Institute	July 2020	- Swarthmore College	Oct 2015
- UC Berkeley	Sept 2018	- Bowling Green	May 2015
- Brandeis-Harvard-MIT-NEU	Mar 2018	- City College of New York	Feb 2015
- Northwestern University	Oct 2017	- Indiana University	Nov 2014
- University of Illinois	Sept 2017	- the Technion	Oct 2014
- University of Utah	Aug 2017	- Wisconsin-Madison	Sept 2014
- Wesleyan	Dec 2016	- Stony Brook	March 2013
- Worcester Polytechnic Inst.	Dec 2016		

Minicourses

- Integer programming and combinatorial optimization (two talks) | Georgia Tech May 2021
- Workshop in geometric topology (main speaker, three talks) | Provo, UT June 2017
- Growth in groups (two talks) | MSRI, Berkeley, CA August 2016
- Hyperbolicity in Teichmüller space (three talks) | Université de Grenoble May 2016
- Counting and growth (four talks) | IAS Women's Program, Princeton May 2016
- Nilpotent groups (three talks) | Seoul National University October 2014
- Sub-Finsler geometry of nilpotent groups (five talks) | Galatasaray Univ., Istanbul April 2014

Science, Technology, and Society

- The Mathematics of Accountability | Sawyer Seminar, Anthropology, Johns Hopkins February 2020
- STS Circle | Harvard Kennedy School of Government September 2019
- Data, Classification, and Everyday Life Symposium | Rutgers Center for Cultural Analysis January 2019
- Science Studies Colloquium | UC San Diego January 2019
- Arthur Miller Lecture on Science and Ethics | MIT Program in Science, Tech, and Society November 2018

Data Science, Computer Science, Quantitative Social Science

- Data Science for Social Good Workshop (DS4SG) | Georgia Tech (virtual) November 2020
- Privacy Tools Project Retreat | Harvard (virtual) May 2020
- Women in Data Science Conference | Microsoft Research New England March 2020
- Quantitative Research Methods Workshop | Yale Center for the Study of American Politics February 2020
- Societal Concerns in Algorithms and Data Analysis | Weizmann Institute December 2018
- Quantitative Collaborative | University of Virginia March 2018
- Quantitative Social Science | Dartmouth College September 2017
- Data for Black Lives Conference | MIT November 2017

Political Science, Geography, Law, Democracy, Fairness

- The Long 19th Amendment: Women, Voting, and American Democracy | Radcliffe Institute Nov–Dec 2020
- "The New Math" for Civil Rights | Social Justice Speaker Series, Davidson College November 2020
- Math, Law, and Racial Fairness | Justice Speaker Series, University of South Carolina November 2020
- Voting Rights Conference | Northeastern Public Interest Law Program September 2020
- Political Analysis Workshop | Indiana University November 2019
- Program in Public Law Panel | Duke Law School October 2019
- Redistricting 2021 Seminar | University of Chicago Institute of Politics May 2019
- Geography of Redistricting Conference Keynote | Harvard Center for Geographic Analysis May 2019
- Political Analytics Conference | Harvard University November 2018
- Cyber Security, Law, and Society Alliance | Boston University September 2018
- Clough Center for the Study of Constitutional Democracy | Boston College November 2017
- Tech/Law Colloquium Series | Cornell Tech November 2017
- Constitution Day Lecture | Rockefeller Center for Public Policy, Dartmouth College September 2017

Editorial Boards

Harvard Data Science Review

Associate Editor since 2019

Advances in Mathematics

Member, Editorial Board since 2018

Selected Professional and Public Service

Amicus Brief of Mathematicians, Law Professors, and Students <i>principal co-authors: Guy-Uriel Charles and Moon Duchin</i> Supreme Court of the United States, in <i>Rucho v. Common Cause</i> - cited in dissent	2019
Committee on Science Policy American Mathematical Society	2020–2023
Program Committee Symposium on Foundations of Responsible Computing	2020–2021
Presenter on Public Mapping, Statistical Modeling National Conference of State Legislatures	2019, 2020
Committee on the Human Rights of Mathematicians American Mathematical Society	2016–2019
Committee on The Future of Voting: Accessible, Reliable, Verifiable Technology National Academies of Science, Engineering, and Medicine	2017–2018

Visiting Positions and Residential Fellowships

Visiting Professor Department of Mathematics Boston College Chestnut Hill, MA	Fall 2021
Fellow Radcliffe Institute for Advanced Study Harvard University Cambridge, MA	2018–19
Member Center of Mathematical Sciences and Applications Harvard University Cambridge, MA	2018–19
Visitor Microsoft Research Lab MSR New England Cambridge, MA	2018–19
Research Member Geometric Group Theory program Mathematical Sciences Research Institute Berkeley, CA	Fall 2016
Research Member Random Walks and Asymptotic Geometry of Groups program Institut Henri Poincaré Paris, France	Spring 2014
Research Member Low-dimensional Topology, Geometry, and Dynamics program Institute for Computational and Experimental Research in Mathematics Providence, RI	Fall 2013
Research Member Geometric and Analytic Aspects of Group Theory program Institut Mittag-Leffler Stockholm, Sweden	May 2012
Research Member Quantitative Geometry program Mathematical Sciences Research Institute Berkeley, CA	Fall 2011
Postdoctoral Fellow Teichmüller "project blanc" Agence Nationale de la Recherche (Collège de France) Paris, France	Spring 2009

Exhibit B

Schauf, Zachary C.

From: McKnight, Katherine L. <kmcknight@bakerlaw.com>
Sent: Thursday, December 9, 2021 12:05 PM
To: Theodore, Elisabeth; Feldman, Stephen; Burton Craige; Narendra Ghosh; Paul Smith; 'melias@elias.law'; 'abbranch@elias.law'; Imadduri@elias.law; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton; Callahan, Sam; Doerr, Adam; Zimmerman, Erik; Hirsch, Sam; Amunson, Jessica Ring; Bracey, Kali N.; Schauf, Zachary C.; Mittal, Urja R.
Cc: Phil Strach; Tom Farr; John Branch; Alyssa Riggins; Braden, E. Mark; Raile, Richard; Brennan, Stephanie; Majmundar, Amar; 'tsteed@ncdoj.gov'
Subject: NCLCV v. Hall (21 CVS 15426)/Harper v. Hall (21 CVS 500085) -- Request for source code and related information

External Email – Exercise Caution

Dear Plaintiffs' Counsel in the *Harper* and *NCLCV* matters,

We write to request copies of the source code, source data, input parameters (i.e., the exact model specifications and input parameters given to the computer programs to perform the simulations analysis), and all data outputted from those simulations (including reporting as well as shapefiles or block-assignment files for the simulated plans) for the analyses that formed the basis for the expert reports of Drs. Chen and Pegden in the *Harper* case. We also request the data and model parameters underlying Dr. Duchin's expert report in the *NCLCV* matter. Finally, we request the source code, source data, input parameters (as defined above), and output data (as defined above) used to generate the three "Optimized" Maps/Plans that the *NCLCV* Plaintiffs asked Dr. Duchin to assess and that they produced to the Court.

Considering the tight timeframe governing these cases, we ask that Plaintiffs produce these materials **by 12pm Monday, December 13**. We are available to discuss best ways to transfer this material.

If Plaintiffs in either case plan to withhold any of these materials, we ask for notice of that refusal **by 12pm Monday, December 13**.

Thank you very much,

Kate

Katherine L. McKnight
Partner

BakerHostetler

Washington Square
1050 Connecticut Ave, N.W. | Suite 1100
Washington, DC 20036-5403
T +1.202.861.1618

kmcknight@bakerlaw.com
bakerlaw.com



addressed and may contain information that is privileged, confidential, or protected by law. If you are not the intended recipient you are hereby notified that any dissemination, copying or distribution of this email or its contents is strictly prohibited. If you have received this message in error, please notify us immediately by replying to the message and deleting it from your computer.

Any tax advice in this email is for information purposes only. The content of this email is limited to the matters specifically addressed herein and may not contain a full description of all relevant facts or a complete analysis of all relevant issues or authorities.

Internet communications are not assured to be secure or clear of inaccuracies as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. Therefore, we do not accept responsibility for any errors or omissions that are present in this email, or any attachment, that have arisen as a result of e-mail transmission.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA LEAGUE, OF
CONSERVATION VOTERS, INC., *et*
al.,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL,
in his official capacity as Chair of the
House Standing Committee on
Redistricting, *et al.*,

Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 015426

FILED
2021 DEC 15 PM 3:38
WAKE CO., C.S.C.
BY _____

STATE OF NORTH CAROLINA

COUNTY OF WAKE

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL,
in his official capacity as Chair of the
House Standing Committee on
Redistricting, *et al.*,

Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 500085

ORDER ON COMMON CAUSE MOTION TO INTERVENE

THIS MATTER comes before the undersigned Three-Judge Panel upon the Motion to Intervene filed by Intervenor-Applicant Common Cause, pursuant to Rule 24 of the

North Carolina Rules of Civil Procedure. Intervenor-Applicant desires to intervene as plaintiffs in these consolidated cases.

Procedural History

In this litigation, NCLCV Plaintiffs and Harper Plaintiffs [hereinafter collectively referred to as “Plaintiffs”] seek a judgment declaring as unconstitutional and invalid the North Carolina congressional districts, North Carolina Senate districts, and North Carolina House districts established, respectively, by acts of our General Assembly in N.C. Sess. Laws 2021-174 (S.L. 2021-174), N.C. Sess. Laws 2021-173 (S.L. 2021-173), and N.C. Sess. Laws 2021-174 (S.L. 2021-175) (collectively, the “Enacted Plans”). Plaintiffs also seek to enjoin Defendants, their agents, officers, and employees from preparing for, administering, or conducting any election under the Enacted Plans.

NCLCV Plaintiffs (Civil Action No. 21 CVS 015426) filed their Complaint contemporaneously with a Motion for Preliminary Injunction pursuant to North Carolina Rules of Civil Procedure 7(b) and 65 on November 16, 2021. NCLCV Plaintiffs challenge the Enacted Plans on partisan gerrymandering, racial gerrymandering, and whole-county provision grounds. Harper Plaintiffs (Civil Action No. 21 CVS 500085) filed their Complaint on November 18, 2021, and a Motion for Preliminary Injunction pursuant to Rule 65 and N.C.G.S. § 1-485 on November 30, 2021, challenging the congressional districts on partisan gerrymandering grounds. Harper Plaintiffs amended their Complaint on December 13, 2021, and the Harper Plaintiffs’ operative Complaint now challenges on partisan gerrymandering grounds the Enacted Plans.

On November 19, 2021 and November 22, 2021, the NCLCV and Harper actions were transferred to the undersigned three-judge panel of Superior Court, Wake County, pursuant to N.C.G.S. § 1-267.1 and N.C.G.S. § 1A-1, Rule 42(b)(4), respectively.

On December 3, 2021, the undersigned consolidated the NCLCV and Harper matters pursuant to Rule 42 of the North Carolina Rules of Civil Procedure. On December 3, 2021, the undersigned denied Plaintiffs' Motions for Preliminary Injunction, and on that same date Plaintiffs filed a notice of appeal.

On December 8, 2021, on Plaintiffs' Petitions for Discretionary Review Prior to Determination by the Court of Appeals, the Supreme Court of North Carolina granted a preliminary injunction and temporarily stayed the candidate filing period "until such time as a final judgment on the merits of plaintiffs' claims, including any appeals, is entered and remedy, if any is required, has been ordered." SCONC order on Pls motion p. 3. The Order further directed the trial court to hold proceedings on the merits of Plaintiffs' claims and provide written ruling by January 11, 2022.

On November 30, 2021, in a separate action, *NC NAACP v. Berger* (Civil Action No. 21 CVS 14476), the trial court denied the Motion for Preliminary Injunction filed by Common Cause, along with other plaintiffs, and granted Legislative Defendant's Motion to Dismiss. On December 6, 2021, plaintiffs in that action filed a Notice of Appeal. On December 8, 2021, the Supreme Court of North Carolina issued an Order that held the following:

Pursuant to Rule 15 of the North Carolina Rules of Appellate Procedure, the Petition for Discretionary Review is dismissed ex mero motu without prejudice to the plaintiffs-petitioners' right to seek leave from the Superior Court to intervene in the trial court proceeding in the consolidated cases of *Harper v. Hall* . . . and *North Carolina League of Conservation Voters, Inc. v. Hall*.

SCONC order on Int's Motion p. 2

On December 13, 2021, Intervenor-Applicant Common Cause filed the present Motion to Intervene, and responses were received from both Harper and NCLCV Plaintiffs and Legislative and State Defendants on December 14, 2021. On December 13, 2021, the undersigned panel entered a Scheduling Order, setting a trial date for January 3, 2021.

The parties have informed the Court of their respective positions on the Motion, and the matter is now ripe for resolution by the Court.

Motion to Intervene

On December 13, 2021, Intervenor-Applicant filed the present motion pursuant to Rule 24 of the North Carolina Rules of Civil Procedure, accompanied by a pleading setting forth the claim or defense for which intervention is sought. Intervenor-Applicant seeks to intervene in this matter as a plaintiff, seeking intervention both as of right and permissively. Intervenor-Applicant seeks to challenge the process the General Assembly undertook in creating the Enacted Plans as intentional racial discrimination and to challenge the Enacted Plans as partisan gerrymanders.

“Intervention in North Carolina is governed by statute. Rule 24 of the North Carolina Rules of Civil Procedure determines when a third party may intervene as of right or permissively.” *Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 458, 515 S.E.2d 675, 682 (1999).

Intervention as of right in an action is provided by Rule 24(a), which states that

[u]pon timely application anyone shall be permitted to intervene in an action:

- (1) When a statute confers an unconditional right to intervene; or
- (2) When the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

N.C.G.S. § 1A-1, Rule 24(a). Permissive intervention in an action is provided by Rule 24(b), which states that:

[u]pon timely application anyone may be permitted to intervene in an action.

- (1) When a statute confers a conditional right to intervene; or

(2) When an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or State governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, such officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

N.C.G.S. § 1A-1, Rule 24(b). Permissive intervention “rests within the sound discretion” of the court, *Virmani*, 350 N.C. at 460, 515 S.E.2d at 683.

As an initial matter, the Court considers Intervenor-Applicant’s Motion to be timely made. The Motion was filed shortly after the Supreme Court of North Carolina’s Order granting a temporary stay of the candidate filing period and ordering this Court to hold proceedings and rule on the merits of Plaintiffs’ claims. The Motion was also filed prior to the entry of the Scheduling Order in this case, and Intervenor-Applicant has represented that it is willing and able to meet any Scheduling Order set forth by this Court in this matter.

As to Intervenor-Applicant’s Motion to intervene as of right, the Court finds that Intervenor-Applicant’s interests are adequately represented in this case by the existing parties—namely the current, named Plaintiffs that seek the same ultimate relief.


As to Intervenor-Applicant’s Motion to intervene permissively, this Court finds that Intervenor-Applicant’s claims have questions of law or fact in common with the main action. Intervenor-Applicant is a non-profit, nonpartisan democracy organization whose mission is dedicated to fair elections. Intervenor-Applicant has members, staff and supporters in every district of the challenged Enacted Plans. Plaintiffs contend that allowing Intervenor-Applicant to intervene in this matter will further limit the already compressed time allotment for Plaintiffs’ trial presentation. However, this Court finds—in consideration of the Supreme Court’s directive to this Court to resolve all claims on the merits by January 11, 2022—that

intervention by this Intervenor-Applicant at this early stage of the litigation will not unduly delay or prejudice the adjudication of the rights of the original parties in this action. The current schedule and trial procedures in the December 13, 2021, Scheduling Order can accommodate the addition of this Intervenor-Applicant as a plaintiff in these consolidated cases.

For the foregoing reasons, the Court hereby ORDERS as follows:

1. Intervenor-Applicant's Motion to intervene as of right is DENIED.
2. Intervenor-Applicant's Motion for permissive intervention under Rule 24(b) is hereby GRANTED at the Court's discretion, and Intervenor-Applicant shall hereinafter be designated as "Plaintiff" in this matter.
3. Given the time limitations, Common Cause shall file the Complaint, presented to the Court as Exhibit A to the Motion to Intervene, within one (1) day of the entry of this Order. Defendants may then plead in response to Common Cause's Complaint by filing a responsive pleading by 5:00 PM EST on December 17, 2021, as provided for responsive pleadings to amended complaints in the Scheduling Order; however, Defendants need not answer Common Cause's Complaint. If a defendant chooses not to answer the allegations of the Complaint, then those allegations will be deemed denied.
4. Intervenor-Applicant must comply with the previously filed Scheduling Order.

SO ORDERED, this the 15th day of December, 2021.


A. Graham Shirley, Superior Court Judge

/s/ Nathaniel J. Poovey

Nathaniel J. Poovey, Superior Court Judge

/s/ Dawn M. Layton

Dawn M. Layton, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission addressed as follows:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Harper Plaintiffs

Stephen D. Feldman
Adam K. Doerr
Erik R. Zimmerman
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
adoerr@robinsonbradshaw.com
ezimmerman@robinsonbradshaw.com
Counsel for NCLCV Plaintiffs


Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Jeffrey Loperfido
SOUTHERN COALITION FOR
SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org
jeffloperfido@scsj.org
Counsel for Common Cause Plaintiff-Intervenor

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
NELSON MULLINS RILEY &
SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Phillip.strach@nelsonmullins.com
Tom.farr@nelsonmullins.com
Alyssa.riggins@nelsonmullins.com
Counsel for Legislative Defendants

Terence Steed
Amar Majmundar
Stephanie A. Brennan
NORTH CAROLINA DEPARTMENT
OF JUSTICE
Post Office Box 629
Raleigh, NC 27602
tsteed@ncdoj.gov
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
Counsel for State Board Defendants

Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 15th day of December 2021.



Kellie Z. Myers
Trial Court Administrator
10th Judicial District
Kellie.Z.Myers@nccourts.org

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 015426

NORTH CAROLINA LEAGUE, OF
CONSERVATION VOTERS, INC., *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL,
in his official capacity as Chair of the
House Standing Committee on
Redistricting, *et al.*,

Defendants.

FILED
2021 DEC 15 PM 4:31
WAKE CO., C.S.C.
RY

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 500085

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL,
in his official capacity as Chair of the
House Standing Committee on
Redistricting, *et al.*,

Defendants.

ORDER ON LEGISLATIVE DEFENDANTS' MOTION TO COMPEL

THIS MATTER came before the undersigned three-judge panel upon Legislative Defendants' Motion to Compel both Harper Plaintiffs and NCLCV Plaintiffs (collectively "Plaintiffs") to produce source code, source data, input parameters, and outputted data

pertaining to the expert reports produced during the preliminary-injunction phase of this litigation.

Procedural and Factual Background

In this litigation, Plaintiffs seek a declaration that the Congressional, North Carolina Senate, and North Carolina House of Representatives districts established by an act of the General Assembly in 2021, N.C. Sess. Laws 2021-174 (Senate Bill 750), 2021-173 (Senate Bill 739), and 2021-175 (House Bill 976), violate the rights of Plaintiffs under the North Carolina Constitution. Plaintiffs seek to enjoin the future use of the 2021 congressional and state legislative districts.

Plaintiffs collectively assert causes of action in their operative complaints under multiple provisions of the North Carolina Constitution, alleging that the challenged districts violate: 1) the North Carolina Constitution's free elections clause, N.C. Const. art. I, § 10; 2) the North Carolina Constitution's rights of association clauses, namely freedom of speech and freedom of assembly, N.C. Const. art. I, §§ 12, 14; 3) the North Carolina Constitution's equal protection clause, N.C. Const. art. I, § 19; and 4) the North Carolina Constitution's whole county provisions, N.C. Const. art. II, §§ 3, 5.

On December 8, 2021, after receiving an order from the Supreme Court of North Carolina directing this Court to resolve all Plaintiffs' claims on the merits by January 11, 2022, this Court requested that all parties submit proposed scheduling orders by December 10, 2021. In these submissions, Harper Plaintiffs stated that they had "separately agreed to produce by Monday, December 13, certain source code and backup data from their experts' initial reports at the preliminary injunction phase" so long as Legislative Defendants provided "the home addresses of all the incumbent legislators and members of Congress." Also in these submissions, both sets of Plaintiffs proposed to produce the source code, source data, input parameters, and output data for each expert witness report submitted.

On December 13, 2021, this Court entered a Case Scheduling Order giving the parties until December 23, 2021, to exchange evidence, including expert witness reports. Paragraph 4 of the Case Scheduling Order further provided that “[e]xpert reports produced to an opposing party shall be accompanied by all source code, source data, input parameters, and all outputted data.” On December 14, 2021, Legislative Defendants filed the present Motion to Compel seeking this very information for the expert reports produced by Plaintiffs during the preliminary-injunction phase of this litigation.

On December 15, 2021, at the Court’s direction, Plaintiffs submitted written responses stating their position on the Motion to Compel. NCLCV Plaintiffs contend that Legislative Defendants’ motion is premature and requests the production of documents that “were not provided to, were never in the possession of, and were not considered by” their expert, Professor Moon Duchin and therefore not subject to production pursuant to Rule 26(b)(4) of the North Carolina Rules of Civil Procedure. Harper Plaintiffs additionally submitted a Motion for Protective Order with their response to Legislative Defendants’ Motion to Compel and, in their response to Legislative Defendants’ Motion, submit that they do not object to producing the requested materials subsequent to the entry of the requested protective order. The parties have fully briefed their respective positions on the Motion, and the matter is now ripe for resolution by the Court.

After considering Legislative Defendants’ motion to compel and the matters contained therein, as well as the parties’ responses and submissions, and having reviewed the record proper, the Court, in its discretion, rules upon Legislative Defendants’ motion as follows:

Legislative Defendants’ Motion to Compel

The Court finds and concludes that three reasons exist to grant Legislative Defendants’ Motion to Compel Plaintiffs’ production of source code, source data, input

parameters, and outputted data pertaining to their expert reports produced during the preliminary-injunction phase of this litigation.

a. The Requested Data are Discoverable

“Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party.” N.C.G.S. § 1A-1, Rule 26(b)(1). “The test for relevance for discovery purposes only requires that information be ‘reasonably’ calculated to lead to the discovery of admissible evidence.” *Lowd v. Reynolds*, 205 N.C. App. 208, 214, 695 S.E.2d 479, 483 (2010) (quoting N.C.G.S. § 1A-1, Rule 26(b)(1)). “[O]rders regarding discovery are within the discretion of the trial court.” *Dworsky v. Travelers Ins. Co.*, 49 N.C. App. 446, 448, 271 S.E.2d 522, 523 (1980).

Specifically as to expert witness discovery, Rule 26 provides that expert reports are to include “[a] complete statement of all opinions the witness will express and the basis and reasons for them,” and “[t]he facts or data considered by the witness in forming them.” N.C.G.S. § 1A-1, Rule 26(b)(4). As such, parties are not entitled to more discovery than Rule 26 permits and cannot compel production of materials never received or considered by an opposing party’s expert.

Plaintiffs have indicated their intent to rely upon expert reports in order to support their claims that the congressional and state legislative redistricting legislation violates the North Carolina Constitution. As such, the source code, source data, input parameters, and outputted data pertaining to these expert reports are clearly relevant. Similarly, Plaintiffs relied on certain expert reports during the preliminary injunction phase of this litigation in order to prove a likelihood to success on the merits of their claims. While this Court, in reaching a final judgment, will not be bound by any findings made during the preliminary injunction phase, the data underlying these expert reports plainly relates to Plaintiffs’ claims

and Legislative Defendants' likely defenses such that the information can be reasonably calculated to lead to the discovery of admissible evidence.

This conclusion, however, does not require the production of any documents or information that NCLCV Plaintiffs' expert, Professor Moon Duchin, did not consider or receive.

b. Agreement between Harper Plaintiffs and Legislative Defendants

As discussed above, Harper Plaintiffs have already agreed to produce the source code and backup data requested by Legislative Defendants if Legislative Defendants produce the home addresses of all incumbent state legislators and members of Congress. Legislative Defendants submit that they produced the requested addresses on the morning of Tuesday, December 14, 2021. Accordingly, Harper Plaintiffs cannot now claim that Legislative Defendants have no right to the source code and backup data.

c. December 13, 2021 Scheduling Order

The information requested by Legislative Defendants has already been ordered produced by this Court. The Case Scheduling Order commands that “[e]xpert reports produced to an opposing party shall be accompanied by all source code, source data, input parameters, and all outputted data.” Plaintiffs must therefore produce the source code for expert reports already produced during the preliminary injunction phase of this litigation.

Protective Order

In response to Legislative Defendants' Motion to Compel, Harper Plaintiffs filed a Motion for Protective Order pursuant to Rule 26(c) of the North Carolina Rules of Civil Procedure, claiming that their experts' source code is proprietary and should be labeled confidential. As Harper Plaintiffs note in their Motion, academics serving as expert witnesses often treat their underlying source code as confidential.

The Court recognizes Plaintiffs' desire to protect the sensitive and proprietary nature of the source code used by their experts. When limiting discovery, a court may order that discovery only be had on specified terms and conditions, that discovery be had by a particular method, or that "confidential research . . . be disclosed only in a designated way." See N.C.G.S. § 1A-1, Rule 26(c). Protective orders, such as the one proposed by Harper Plaintiffs, are "essential to the efficient functions of the discovery process" in cases involving confidential information. See *Longman v. Food Lion, Inc.*, 186 F.R.D. 331, 333 (M.D.N.C. 1999).

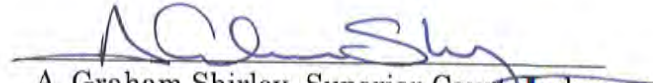
This Court is satisfied that producing these materials while also marking them confidential will sufficiently protect their proprietary value. Indeed, Harper Plaintiffs do not object to producing the requested materials subsequent to the entry of the requested protective order. Additionally, materials produced during discovery and source material for trial exhibits are not automatically a part of the public record. As such, it is appropriate to allow discovery of these materials under the protection of a protective order. Harper Plaintiffs' Motion for Protective Order will be granted by separate order entered contemporaneously with this order.

Conclusion

WHEREFORE, the Court, for the reasons stated herein and in the exercise of its discretion, hereby ORDERS that Legislative Defendants' motion to compel is GRANTED in part and DENIED in part as follows:

1. Plaintiffs shall produce to Legislative Defendants by 3:00 PM EST on December 16, 2021, all source code, source data, input parameters, and all outputted data pertaining to the expert reports produced to Legislative Defendants during the preliminary injunction phase of this litigation.
2. NCLCV Plaintiffs are not required to produce any documents or information that Professor Moon Duchin did not consider or receive.
3. The materials shall be produced in accordance with the contemporaneously filed protective order.

SO ORDERED, this the 15th day of December, 2021.


A. Graham Shirley, Superior Court Judge

/s/ Nathaniel J. Poovey

Nathaniel J. Poovey, Superior Court Judge

/s/ Dawn M. Layton

Dawn M. Layton, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission addressed as follows:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Harper Plaintiffs

Stephen D. Feldman
Adam K. Doerr
Erik R. Zimmerman
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
adoerr@robinsonbradshaw.com
ezimmerman@robinsonbradshaw.com
Counsel for NCLCV Plaintiffs

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Jeffrey Loperfido
SOUTHERN COALITION FOR
SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org
jeffloperfido@scsj.org
Counsel for Common Cause Plaintiff-Intervenor

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
NELSON MULLINS RILEY &
SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Phillip.strach@nelsonmullins.com
Tom.farr@nelsonmullins.com
Alyssa.riggins@nelsonmullins.com
Counsel for Legislative Defendants

Terence Steed
Amar Majmundar
Stephanie A. Brennan
NORTH CAROLINA DEPARTMENT
OF JUSTICE
Post Office Box 629
Raleigh, NC 27602
tsteed@ncdoj.gov
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
Counsel for State Board Defendants

Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 15th day of December 2021,



Kellie Z. Myers
Trial Court Administrator
10th Judicial District
Kellie.Z.Myers@nccourts.org

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

2021 DEC 15 PM 4: 31

SUPERIOR COURT DIVISION

WAKE CO., C.S.C.

No. 21 CVS 015426

No. 21 CVS 500085

BY _____

NORTH CAROLINA LEAGUE OF CONSERVATION
VOTERS, INC., *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

PROTECTIVE ORDER

THIS MATTER COMING BEFORE THE COURT upon the motion of Plaintiffs in *Harper v. Hall*, No. 21 CVS 50085, and for good cause shown, the Court enters the following protective order.

1. This Order shall govern the production and exchange of the Parties' documents, and any testimony at deposition relating to such documents, that reflect the Parties' confidential information, specifically including answers to requests for admission, answers to interrogatories,

responses to requests for production of documents and documents produced in accordance therewith, documents subpoenaed, and any deposition transcript or portion thereof as to which protection is sought in accordance with this Order. In addition, the terms of this Order shall apply only to all manner and means of discovery, including entry onto land or premises, and inspection of books, records, documents, and tangible things. To fall within the scope of this Order, all such Confidential material shall be designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY,” by the Party producing the material. References to “Confidential” material in this Order include material marked “CONFIDENTIAL” and “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY.”

2. As a general guideline, “CONFIDENTIAL” information shall be those things that may be disclosed to the Plaintiffs and Defendants for the purposes of the litigation, but which a party contends must be protected against disclosure to third parties. Absent a specific order by the Court, once designated as “CONFIDENTIAL,” such information shall be used by the Parties solely in connection with this litigation, and not for any political, business, commercial, competitive, personal, governmental, or other purpose or function whatsoever, and such information shall not be disclosed to anyone except as provided herein. The producing Party may designate as “CONFIDENTIAL” any material that it produces in the litigation which it believes constitutes, contains, reflects, or discloses confidential, non-public trade secrets, competitively sensitive or proprietary information, research and analysis, development or commercial information, or other information for which a good faith claim of need of protection from disclosure can be made.

3. As a general guideline, “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” information shall be those things that may be disclosed only to outside attorneys of the receiving party who are not also employees of the receiving party. Absent a specific order by the Court, once designated as “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY,” such information shall be used by the Parties solely in connection with this litigation, and not for any political, business, commercial, competitive, personal, governmental, or other purpose or function whatsoever, and such information shall not be disclosed to anyone except as provided herein. The producing Party may designate as “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” (a) any non-public personal information or (b) any CONFIDENTIAL material that the producing Party reasonably and in good faith believes to be extremely sensitive confidential and/or proprietary information, disclosure of which to a Party or another non-party would create a substantial risk of significant competitive or business injury.

4. All “CONFIDENTIAL” and “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” information and material covered by this Order shall be kept in secure facilities, and access to those facilities shall be permitted only to those designated persons as provided herein. However, information may be kept in the law offices of the respective counsel without additional security measures beyond those typically accorded client files.

5. No designated confidential material shall be reproduced except as required in connection with the litigation of this case. Any person making, or causing to be made, photocopies, excerpts, blow-ups, or demonstrative material reflecting any designated confidential material (such as charts or diagrams) shall make certain that each such item bears the appropriate “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” marking. All copies, extracts, or summaries prepared from designated confidential materials

produced hereunder shall be subject to the same terms of this Order as the designated confidential material from which such copies, extracts, or summaries were prepared.

6. Producing or receiving information or material designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” in compliance with the terms of this Order shall not:

- a. Operate as an admission by any Party that any particular information or material designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” contains or reflects trade secrets, proprietary or commercially-sensitive information, or any other type of confidential information;
- b. Operate as an admission by any Party that the restrictions and procedures set forth herein constitute or do not constitute adequate protection for any particular information deemed by any Party to be “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY”;
- c. Prejudice in any way the rights of any Party to object to the production of documents it considers not subject to discovery;
- d. Prejudice in any way the rights of any Party to object to the authenticity or admissibility into evidence of any document, testimony, or other evidence subject to this Order;
- e. Prejudice in any way the rights of any Party to seek a determination by the Court whether any information or material should be subject to the terms of this Order;
- f. Prejudice in any way the rights of any Party to petition the Court for a further protective order relating to any purportedly confidential information; and

- g. Prevent the Parties to this Order from agreeing in writing or on the record during a deposition or hearing in this action to alter or waive the provisions or protections provided herein with respect to any particular information or material.

7. This Order has no effect upon, and shall not apply to, a Party's use or disclosure of its own confidential information or the disclosure of a Party's information to the Party or the Party's employees for any purpose. Nothing contained herein shall impose any restrictions on the use or disclosure by a Party of documents, information, or material designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS' EYES ONLY" obtained lawfully by such Party independently of any proceedings in this action, or which:

- a. Was already known to such Party by lawful means prior to acquisition from, or disclosure by, any other Party in this action;
- b. Is or becomes publicly known through no fault or act of such Party; or
- c. Is rightfully received by such Party from a third Party which has authority to provide such information or material and without restriction as to disclosure.

8. For purposes of this Order, the word "document(s)" shall have the same meaning ascribed to the word "document" in Rule 34 of the North Carolina Rules of Civil Procedure.

9. Information and documents containing information subject to this Order may be used as exhibits or otherwise during depositions and trial in this litigation. Any non-party witness shown Confidential information during a deposition, hearing, or trial in this litigation shall, prior to being shown the Confidential information, be asked to state under oath on the record, or shall execute an affidavit or declaration in the form attached as Exhibit A, that he or she has agreed to be bound by this Order.

10. Information or material designated as “CONFIDENTIAL” may be disclosed, summarized, or otherwise made available in whole or in part only to the following persons:

- a. counsel of record for the Parties and regular and temporary employees of such counsel to whom it is necessary that the information or material be shown for the purposes of this litigation;
- b. Plaintiffs, Defendants, and employees of the Plaintiffs or Defendants;
- c. consulting or testifying experts retained for purposes of this litigation, who have signed a document in the form attached as Exhibit A to this Order;
- d. the Court;
- e. court reporters employed in connection with this action;
- f. any other person only upon order of the Court or upon prior written consent of the Party producing the confidential information or material.

11. Information or material designated as “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” may be disclosed, summarized, or otherwise made available in whole or in part only to the following persons:

- a. outside counsel of record for the Parties and regular and temporary employees of such outside counsel to whom it is necessary that the information or material be shown for the purposes of this litigation, but not including any employee of a Party to this litigation;
- b. the Court;
- c. court reporters employed in connection with this action;
- d. any other person only upon order of the Court or upon prior written consent of the Party producing the confidential information or material.

12. The terms of this order are applicable to information produced by a non-Party in the litigation and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY,” as applicable. Such information produced by non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a non-Party from seeking additional protections.

13. Nothing in this Order shall prevent any Party from producing any document or information in its possession in response to a lawful subpoena or other compulsory process, provided that prompt notice of the subpoena or compulsory process shall be given to the Party or who produced the information in this litigation. That notice shall be given prior to the date that the Party subpoenaed is required to respond to the subpoena or other compulsory process in which materials designated confidential are sought. A Party who receives a lawful subpoena or other compulsory process will cooperate with respect to all reasonable procedures sought to be pursued by the producing party whose “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” information may be affected.

14. Inadvertent failure to designate material as Confidential material at the time of production may be remedied by supplemental written notice. Once such notice is received, all documents, material, or testimony so designated shall be treated as if they had been initially designated as Confidential material. Notwithstanding such notice, if prior to receipt of the notice, Confidential material has been disclosed or used in a manner inconsistent with the provisions of this Order, it shall be deemed a limited disclosure which shall not be considered a violation of this Order. Upon receipt of such notice, the designated material shall thereafter be considered subject to this Order.

15. The provisions of this Order shall remain in full force and effect following the conclusion of this litigation until or unless this Order is modified or vacated by the Court, or upon written consent of counsel for the Parties.

16. Within sixty (60) days after the conclusion of this litigation (whether by settlement, dismissal or final judgment, after any appeals are concluded or the time for further appeal has expired) all originals and reproductions of Confidential material subject to this Order shall be destroyed by the receiving party's counsel or returned to the producing party. Counsel for the receiving party shall certify to counsel for the producing party within said sixty (60) day time period that such destruction or return has taken place. Notwithstanding this provision, counsel are entitled to retain archival copies of all draft and final pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Confidential material subject to this Order. Any such archival copies that contain or constitute Confidential material subject to this Order will remain subject to this Order, including the restrictions on disclosure therein.

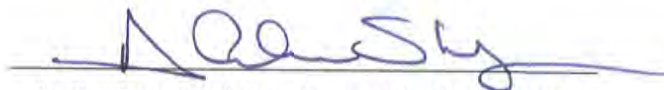
17. Should any party seek to file with the Court or introduce into evidence or information they believe should not be made public and therefore should be placed under seal they must follow the procedures set for in Rule 27 of the Gnereal Rules of Practice. If a party fails to comply with Rule 27 of the Gnereal Rules of Practice, the Court may, at its election deem the party to have waived any protections afforded by this Order.

18. Plaintiffs shall comply with Rule 5.7 of the Local Rules for Civil Superior Court, Tenth Judicial District (as amended in 2015), which governs electronic discovery and requires a party producing documents in an electronic format, or using electronic means to identify

potentially responsive documents, to disclose certain information regarding custodians, non-custodial data sources, date ranges, and search methodology.

SO ORDERED.

This the 15th day of December, 2021.



A. Graham Shirley, Superior Court Judge

/s/ Nathaniel J. Poovey

Nathaniel J. Poovey, Superior Court Judge

/s/ Dawn M. Layton

Dawn M. Layton, Superior Court Judge

EXHIBIT A

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 21 CVS 015426
No. 21 CVS 500085

NORTH CAROLINA LEAGUE OF CONSERVATION
VOTERS, INC., *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

AFFIDAVIT OF CONFIDENTIALITY

I hereby acknowledge that I am about to receive information designated as “Confidential” supplied in connection with the above-referenced litigation. I have received and read a copy of the Protective Order entered in this case.

I understand and agree to be bound by the terms of the Protective Order, and I agree not to disclose or use this information except in accordance with the terms of the Protective Order. I

will not copy or use the Confidential Information I am about to receive except for purposes of this litigation unless such information is or becomes public information in accordance with the terms of the Protective Order.

I understand and agree that the information designated as “Confidential” may only be used for purposes of this litigation only and for no other business,

I further agree to submit to the jurisdiction of the Court and understand that the Court may impose sanctions for any intentional violation of the Protective Order.

I further agree that, upon termination of this litigation, or sooner if so requested, I will return to counsel all Confidential Information provided to me, including any copies and excerpts of such Confidential Information.

I understand that I am permitted to retain copies of my own work product provided that such materials are maintained and protected in accordance with the terms of the Protective Order.

I understand that failure to abide by the terms of the Protective Order may result in legal action against me.

Dated: _____

By: _____

Name: _____

Address: _____

Title: _____

Present Occupation or Job Description:

Employer: _____

Sworn to before me and subscribed in my presence this ____ day of _____, 20__.

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission addressed as follows:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Harper Plaintiffs

Stephen D. Feldman
Adam K. Doerr
Erik R. Zimmerman
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
adoerr@robinsonbradshaw.com
ezimmerman@robinsonbradshaw.com
Counsel for NCLCV Plaintiffs

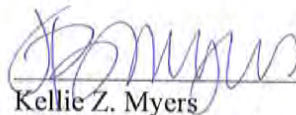
Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Jeffrey Loperfido
SOUTHERN COALITION FOR
SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org
jeffloperfido@scsj.org
Counsel for Common Cause Plaintiff-Intervenor

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
NELSON MULLINS RILEY &
SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Phillip.strach@nelsonmullins.com
Tom.farr@nelsonmullins.com
Alyssa.riggins@nelsonmullins.com
Counsel for Legislative Defendants

Terence Steed
Amar Majmundar
Stephanie A. Brennan
NORTH CAROLINA DEPARTMENT
OF JUSTICE
Post Office Box 629
Raleigh, NC 27602
tsteed@ncdoj.gov
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
Counsel for State Board Defendants

Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 15th day of December 2021.



Kellie Z. Myers
Trial Court Administrator
10th Judicial District
Kellie.Z.Myers@nccourts.org

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

21 CVS 015426

2021 DEC 16 A 9:37

COMMON CAUSE,

WAKE CO., C.S.C.

BY

Plaintiff,

v.

PHILIP E. BERGER in his official capacity as President Pro Tempore of the North Carolina Senate; TIMOTHY K. MOORE in his official capacity as Speaker of the North Carolina House of Representatives; RALPH E. HISE, JR., WARREN DANIEL, PAUL NEWTON, in their official capacities as Co-Chairmen of the Senate Committee on Redistricting and Elections; DESTIN HALL, in his official capacity as Chairman of the House Standing Committee on Redistricting; THE STATE OF NORTH CAROLINA; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as Chair of the State Board of Elections; STELLA ANDERSON, in her official capacity as Secretary of the State Board of Elections; STACY EGGERS IV, in his official capacity as Member of the State Board of Elections; JEFF CARMON III, in his official capacity as Member of the State Board of Elections; TOMMY TUCKER, in his official capacity as Member of the State Board of Elections; KAREN BRINSON BELL, in her official capacity as Executive Director of the State Board of Elections,

Defendants.

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

(Three-Judge Court Pursuant to N.C. Gen.
Stat. § 1-267.1)

Pursuant to N.C.G.S. § 1-253 et seq., and Rules 8, 24, and 57 of the North Carolina Rules of Civil Procedure, Plaintiff Common Cause, through counsel, hereby files this Complaint for declaratory judgment and for injunctive relief.

I. PRELIMINARY STATEMENT

1. After drawing one unconstitutional redistricting plan after another in the last decade,¹ the North Carolina General Assembly has acted in an unlawful and unconstitutional manner by defiantly ignoring clear direction from the North Carolina Supreme Court on how to draw constitutional maps and once again engaging in extreme partisan gerrymandering. North Carolina state Legislative and Congressional districts are once again extreme outliers, do not reflect or allow to be reflected the will of North Carolina voters, and entrench the power of the current Legislative majority in a manner that will be certain to withstand even high turnout elections where voters widely prefer Democratic candidates. At core, North Carolina’s democracy is critically subverted by these actions, and they are inconsistent with the North Carolina Constitution.

¹ See *Covington v. North Carolina*, 316 F.R.D. 117, 124 (M.D.N.C. 2016), *summarily aff’d*, 137 S. Ct. 2211 (2017) (per curiam) (finding state legislative districts as enacted in S.L. 2011-402 and S.L. 2011-404 violated the Equal Protection Clause of the Fourteenth Amendment); *Covington v. North Carolina*, 283 F. Supp. 3d 410, 434-35 (M.D.N.C. 2018) (finding state legislative districts as enacted in S.L. 2017-207 and S.L. 2017-208 violated the Equal Protection Clause of the Fourteenth Amendment); *North Carolina State Conference of NAACP Branches v. Lewis*, No. 18 CVS 002322, slip op. at 2 (N.C. Super. Ct. Nov. 2, 2018) (finding state legislative districts as enacted in S.L. 2017-207 and S.L. 2017-208 violated Article II, Section 5 of the North Carolina Constitution); *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super LEXIS 56, at *333, *346, *361–62 (N.C. Super. Ct. Sept. 3, 2019) (finding state legislative districts as enacted in S.L. 2017-207 and S.L. 2017-208 violated Article I, Section 10, Article I, Section 12, Article I, Section 14, and Article 1, Section 19 of the North Carolina Constitution); *Harris v. McCrory*, 159 F. Supp. 3d 600, 622 (M.D.N.C. 2016), *aff’d sub nom.*, *Cooper v. Harris*, 137 S. Ct. 1455 (2017) (finding Congressional districts as enacted in S.L. 2011-403 violated the Equal Protection Clause of the Fourteenth Amendment); *Harper v. Lewis*, No. 19 CVS 012667, 2019 N.C. Super. LEXIS 122, at *18 (N.C. Super. Ct. Oct. 28, 2019) (order granting preliminary injunction) (finding Congressional districts as drawn in S.L. 2016-1 violated Article I, Section 10, Article I, Section 12, Article I, Section 14, and Article I, Section 19 of the North Carolina Constitution).

2. But the harm does not end here. The incontrovertible evidence of bad actions and bad faith by the current Legislative majority will harm voters of color too. By categorically prohibiting the formal consideration of any racial data in drawing or evaluating districts that would allow legislators to prevent dilution, but acknowledging the obvious familiarity that legislators have with the state’s demography that would still allow them to target these voters, the North Carolina General Assembly knowingly destroyed functioning crossover districts that enabled the election of candidates of choice of voters of color. While such districts may not always be compelled by the Voting Rights Act (“VRA”), the destruction of those districts violates North Carolina’s equal protection guarantees. To be clear, this case is not a Voting Rights Act case. Plaintiff Common Cause solely brings state law claims under the North Carolina Constitution. This case is one of intentional racial discrimination in violation of the North Carolina Constitution, unconstitutional partisan gerrymandering in violation of the North Carolina Constitution, and the legal need for a reckoning with a General Assembly that has no respect for the rule of law, the rulings of the North Carolina Supreme Court, or co-equal judicial institutions at all.

3. Common Cause files this action to challenge the state House, Senate, and federal Congressional maps (“2021 Enacted Maps”) as unconstitutional and invalid, and calls upon this Court to enjoin the 2021 Enacted Maps and to establish new constitutional plans if the General Assembly fails to do so.

4. From the beginning of this process, the Defendant Chairs of the Senate Committee on Redistricting and Elections and the House Committee on Redistricting (the “Redistricting Chairs” of the “Redistricting Committees”) have, despite warnings from citizens and legislators of color, stated their intention to contravene the North Carolina Constitution, as interpreted by the North Carolina Supreme Court *Stephenson v. Bartlett*, by prohibiting the formal consideration of

racial data and failing to undertake any racially polarized voting analyses to understand how district lines would affect minority voting strength and representation. *See Stephenson v. Bartlett*, 355 N.C. 354 (2002) (*Stephenson I*) and *Stephenson v. Bartlett*, 357 N.C. 301 (2003) (*Stephenson II*). They did this while acknowledging it would be infeasible to prevent legislators from applying their pre-existing knowledge of North Carolina’s demographic and political make-up (and by extension doing so in a way that would harm voters of color) when devising districts. The Redistricting Committees have approved redistricting criteria formally prohibiting any use of racial data, and the Redistricting Chairs have stated that they disallowed consideration of any maps drawn that formally, lawfully and properly utilize racial data, despite their legal obligations to do so. These actions directly contravene the North Carolina Constitution, including: (1) the requirements of the North Carolina Constitution, which affirms the supremacy of federal law under Sections 3 and 5 of Article I; and (2) the requirement that legislators first consider the data necessary to ensure satisfaction of the requirements of federal law in drawing state legislative districts, as explained in *Stephenson I* and *II*. They did so in an unnecessarily chaotic process that stifled public comment in an apparent effort to capitalize on the delay in 2020 Census data and evade judicial review as they did last cycle, which allowed the party currently in power to obtain and maintain a veto-proof supermajority for most of the last decade due to unlawful racial gerrymanders.² These tactics should not be tolerated again.

5. Plaintiff Common Cause brings this Declaratory Judgment action seeking a judicial determination that their members and voters they serve are entitled to a redistricting process that adheres to the requirements of Article II, Sections 3 and 5 of the North Carolina Constitution and

² See *Covington v. North Carolina*, 316 F.R.D. 117, 124 (M.D.N.C. 2016), *summarily aff’d*, 137 S. Ct. 2211 (2017) (per curiam).

that the use of purportedly “race-blind” redistricting criteria violates North Carolina law and unlawfully harms voters of color. Defendants Berger, Moore, Hise, Daniel, and Hall (“Legislative Defendants”) intentionally orchestrated an unlawful redistricting process that contravened the requirements of the state Constitution as set forth in *Stephenson I* and *II*. The use of purportedly “race-blind” redistricting criteria in defiance of these requirements, and Legislative Defendants’ failure to conduct any analysis that would prevent vote dilution for voters of color, violates the Equal Protection Clause, Article I, Section 19, of the North Carolina Constitution.

6. Finally, Legislative Defendants have once again persisted in drawing and enacting state Legislative and Congressional maps that are extreme partisan gerrymanders, which intentionally and harmfully dilute the votes of North Carolina’s Democratic voters, in violation of the Free Elections Clause, Equal Protection Clause, and Freedom of Speech and Freedom of Assembly Clauses guaranteed under Article I, Sections 10, 12, 14, and 19 of the North Carolina Constitution. The political analysis of the 2021 Enacted Maps reveal that the purported non-partisan drafting of these maps is implausible given expert analysis of millions of simulated maps that do not use partisan data. Such ensembles of non-partisan maps do not produce the extreme partisan outcomes seen in the 2021 Enacted Maps, and analysis performed by Professor Jonathan Mattingly of Duke University demonstrates that the 2021 Enacted Maps are astonishingly durable and non-responsive to political waves (changes in the state partisan vote shares). Legislative Defendants’ plans will heavily and consistently favor Republican candidates and the Republican Party even if the will of North Carolina’s voters does not.

7. Without judicial intervention, Legislative Defendants’ actions will cause irreparable harm to the rights of Plaintiff Common Cause, its members and the voters it serves, as well as the rights of all North Carolina voters to participate in free elections. The process pursued

by the Redistricting Chairs as described above cannot, as a matter of law, comply with the North Carolina Constitution. The 2021 Enacted Maps are undeniably extremely skewed in favor of the Legislative Defendants’ party. North Carolinians are entitled to have their rights enforced by the courts of this State, and should not have to endure yet another set of elections under unconstitutional maps.

II. JURISDICTION AND VENUE

8. Jurisdiction is proper in this Court pursuant to N.C.G.S. § 1-253 et seq. (“Declaratory Judgment Act”), N.C.G.S. § 7A-245(a)(4), and Article 26A of Chapter 1 of the General Statutes.

9. This Court has the power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed, and such declaration shall have the force and effect of a final judgment or decree. *See* N.C.G.S. § 1-253.

10. The purpose of the Declaratory Judgment Act is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.

11. An action under the Declaratory Judgment Act may be used to declare rights of persons. N.C.G.S. § 1-253.

12. The Declaratory Judgment Act is to be liberally construed and administered. N.C.G.S. § 1-264.

13. Under N.C.G.S. § 1-81.1, the exclusive venue for this action is the Wake County Superior Court.

14. Under N.C.G.S. § 1-267.1, a three-judge court must be convened because this action challenges the validity of redistricting plans enacted by the General Assembly.

15. Removal to federal court is not proper in this matter because all of Plaintiff’s causes of action challenge Defendants’ enacted maps based upon North Carolina Constitutional law, the

matters in dispute do not arise under or require resolution of federal law, and there is no diversity of jurisdiction. This is a suit involving challenging the enactment of state redistricting law, properly brought in this Court.

16. An actual, justiciable controversy exists between Plaintiff and Defendants at present.

III. PARTIES

Plaintiff

17. **Plaintiff Common Cause** is a non-profit nonpartisan democracy organization with over 1.5 million members and local organizations in 30 states, including North Carolina. Common Cause has over 25,000 members, staff and supporters in every district challenged herein of the 2021 Enacted Maps. Since its founding by John Gardner in 1970, Common Cause has been dedicated to fair elections and making government at all levels more representative, open, and responsive to the interests of ordinary people. “For the past twenty-five years, Common Cause has been one of the leading proponents of redistricting reform.”³ Common Cause also assists voters in navigating the elections process, provides resources for voters to determine their districts and their polling locations, and mobilizes voters to engage in political advocacy. Some of the voters assisted by Common Cause identify as voters of color and/or habitually vote for candidates of the Democratic Party. Unfair and discriminatory redistricting directly frustrates and impedes Common Cause’s core missions of making government more responsive to the interests of communities by diminishing the voices of the voters Common Cause works to engage and forces Common Cause to divert resources toward directly combatting the ill effects of unlawful redistricting. Common

³ JONATHAN WINBURN, THE REALITIES OF REDISTRICTING: FOLLOWING THE RULES AND LIMITING GERRYMANDERING IN STATE LEGISLATIVE REDISTRICTING 205 (2008)..

Cause has long advocated for redistricting reform, whether executed by Republicans or Democrats, and for an end to partisan gerrymandering in North Carolina. Partisan gerrymandering frustrates and impedes Common Cause’s core mission of increasing voter engagement and making government officials accountable to voters because this practice preordains election results, making voters less likely or willing to engage and government officials less responsive to constituents. It also frustrates and impedes Common Cause’s goal of advocating for redistricting reform because the beneficiaries of gerrymandered plans are unlikely to adopt meaningful redistricting reform. Common Cause brings this action on its own behalf and on behalf of its members and supporters who are registered voters in North Carolina. These members and supporters include registered voters in every county in North Carolina, registered Democrats and/or voters who support Democratic candidates in each of the districts alleged to be partisan gerrymanders herein, and voters who identify as Black in each of the effective districts for voters of color that were intentionally and unlawfully dismantled by the 2021 Enacted Maps as alleged herein. Each of these members and supporters have a right to representation in the State Legislature that complies with the North Carolina Constitution, a right to be free of intentional discrimination, and a right to free association.

Defendants

18. **Defendant Philip E. Berger** is a member of the North Carolina Senate, having been elected to that office by the voters residing in District 30. Mr. Berger serves as the President *Pro Tempore* of the North Carolina Senate. Mr. Berger is sued in his official capacity.

19. **Defendant Timothy K. Moore** is member of the North Carolina House of Representatives, having been elected to that office by the voters residing in District 111. Mr. Moore

serves as the Speaker of the North Carolina House of Representatives. Mr. Moore is sued in his official capacity.

20. **Defendant Ralph E. Hise, Jr.** is a member of the North Carolina Senate, having been elected to that office by the voters residing in Senate District 47. Mr. Hise serves as the Senate Deputy President *Pro Tempore* and the Chairman of the Senate Redistricting and Elections Committee. Mr. Hise is sued in his official capacity.

21. **Defendant Warren Daniel** is a member of the North Carolina Senate, having been elected to that office by the voters residing in District 46. Mr. Daniel serves as the Chairman of the Senate Redistricting and Elections Committee. Mr. Daniel is sued in his official capacity.

22. **Defendant Paul Newton** is a member of the North Carolina Senate, having been elected to that office by the voters residing in District 36. Mr. Newton serves as the Chairman of the Senate Redistricting and Elections Committee. Mr. Newton is sued in his official capacity.

23. **Defendant Destin Hall** is a member of the North Carolina House of Representatives, having been elected to that office by voters residing in District 87. Mr. Hall serves as the Chairman of the House Redistricting Committee. Mr. Hall is sued in his official capacity.

24. Defendants Hise, Daniel, Newton, and Hall together herein shall be referred to as the “**Redistricting Chairs**” and, together with Defendants Moore and Berger, the “**Legislative Defendants.**”

25. **Defendant State of North Carolina** is one of the fifty sovereign states in the United States of America. Article I of the State’s Constitution establishes, “principles of liberty and free government,” which the General Assembly and its members must honor in enacting legislation for the State and its citizens.

26. **Defendant North Carolina State Board of Elections** is the agency responsible for the administration of North Carolina elections, including issuing rules and regulations for the conduct of all elections in the State.

27. **Defendant Damon Circosta** is the Chairman and a member of the North Carolina State Board of Elections. Mr. Circosta is sued in his official capacity.

28. **Defendant Stella Anderson** is the Secretary and a member of the North Carolina State Board of Elections. Ms. Anderson is sued in her official capacity.

29. **Defendant Stacy Eggers IV** is a member of the North Carolina State Board of Elections. Mr. Eggers is sued in his official capacity.

30. **Defendant Jeff Carmon II** is a member of the North Carolina State Board of Elections. Mr. Carmon is sued in his official capacity.

31. **Defendant Tommy Tucker** is a member of the North Carolina State Board of Elections. Mr. Tucker is sued in his official capacity.

32. **Defendant Karen Brinson Bell** is the Executive Director of the North Carolina State Board of Elections. Ms. Brinson Bell is sued in her official capacity.

33. Defendants the North Carolina State Board of Elections, Circosta, Anderson, Eggers, Carmon, Tucker, and Brinson Bell shall together herein be referred to as the “**SBE Defendants,**” and, together with the State of North Carolina, the “**State Defendants.**”

IV. FACTUAL ALLEGATIONS

A. North Carolina Constitutional Requirements in Redistricting.

34. The North Carolina Constitution provides that “the General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment of Senators among those

districts” and “shall revise the representative districts and the apportionment of Representatives among those districts.” N.C. Const. art. II, §§ 3, 5.

35. The State Constitution specifically enumerates four limitations upon the redistricting and reapportionment authority of the General Assembly, including that:

- a. each Senator and Representative shall represent, as nearly as possible, an equal number of inhabitants;
- b. each senate and representative district shall at all times consist of contiguous territory;
- c. no county shall be divided in the formation of senate or representative districts (the “Whole County Provision”); and
- d. once established, the senate and representative districts and the apportionment of Senators and Representatives shall remain unaltered until the next decennial census of population taken by order of Congress.

See N.C. Const. art. II, §§ 3, 5.

36. In addition to these requirements, Article I, Section 3 of the North Carolina Constitution provides that the rights of the people of North Carolina “shall be exercised in pursuance of law and consistently with the Constitution of the United States,” and Article I, Section 5 of the North Carolina Constitution prohibits a law or ordinance in North Carolina from contravening the federal Constitution. Collectively, these provisions “delineate[] the interplay between federal and state law[.]” *Stephenson I*, 355 N.C. at 370. Finally, Article I, Section 19 guarantees North Carolinians equal protection of the laws and freedom from discrimination by the State on the basis of race, color, religion, or national origin, and Article I, Section 10 provides that “All elections shall be free.”

37. Among the federal requirements applicable to redistricting is compliance with the federal one-person one-vote requirements under the Fourteenth Amendment and the Voting Rights Act (“VRA”), as amended and as proscribed under the Fifteenth Amendment. *Stephenson I*, 355 N.C. at 363-64. Accordingly, *North Carolina law* prohibits any voting qualification or prerequisite that impairs or dilutes, on account of race or color, a citizen’s opportunity to participate in the political process and to elect representatives of their choice. *Id.* This requirement does not command a state to adopt any particular legislative reapportionment plan, but rather prevents the enforcement of redistricting plans having the purpose or effect of diluting the voting strength of legally protected minority groups. *Stephenson I*, 355 N.C. at 364.

38. In *Stephenson v. Bartlett*, the North Carolina Supreme Court sought to harmonize the different North Carolina Constitutional requirements imposed on the redistricting process. 355 N.C. 354; *see also Stephenson II*, 357 N.C. 301. The court developed a methodology for grouping counties together into “clusters” that it held would minimize the splitting of counties, in recognition of the Whole County Provision, while satisfying one-person, one-vote requirements.

39. Importantly, *Stephenson* expressly mandates that “to ensure full compliance with federal law, legislative districts required by the VRA shall be formed prior to the creation of non-VRA districts.” *Stephenson I*, 355 N.C. at 383. In other words, first, any and all districts that are required under the VRA (which requires that districts be drawn without the intent or effect of depriving protected voters of an equal opportunity to elect their candidates of choice) must be drawn.⁴ Only after an analysis is performed to ascertain what districts are compelled by the VRA,

⁴ Importantly, Section 2 of the Voting Rights Act prohibits intentional vote dilution (or intentional racial discrimination in redistricting). Likewise, Article I, Section 19 of the North Carolina Constitution prohibits intentional racial discrimination, *see Holmes v. Moore*, 270 N.C. App. 7, 33 (2020), which would prohibit intentional vote dilution in redistricting. Thus, while the *Stephenson* court referenced the VRA, because part of the VRA is identical in purpose and direction to Article I, Section 19, that part of *Stephenson* cannot be read logically to not also incorporate the requirements incumbent on the legislature under the State’s equal protection guarantees. To put it another way, even if the Section 2 effects test (as opposed to its prohibition on intentional

and those districts are drawn, may any work be done to draw clustered districts that harmonize and maximize compliance with North Carolina’s Whole County Provision and equal protection guarantees of population equality. “Thus, the process established by [the North Carolina Supreme] Court in *Stephenson I* and its progeny requires that, in establishing legislative districts, the General Assembly first must create all necessary VRA districts, single-county districts, and single counties containing multiple districts.” *Dickson v. Rucho*, 368 N.C. 481, 532 (2015), *vacated on other grounds*, 137 S. Ct. 2186 (2017).

40. The trial court in *Stephenson* also instructed that VRA districts should be formed where, “due to demographic changes in population there exists the required [*Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986)] preconditions,” a finding that was affirmed by the North Carolina Supreme Court. *Stephenson II*, 357 N.C. at 307. Accordingly, to comply with *Stephenson*, the Legislature must evaluate demographic changes to determine whether there exist the required *Gingles* preconditions. This includes, at the least, considering racial data and, where legislators and members of the public have indicated that there may be VRA concerns, conducting a regionally-focused Racially Polarized Voting (“RPV”) study to determine if there is legally significant racially polarized voting. *See, e.g., Thornburg v. Gingles*, 478 U.S. 30, 55–58 (1986). Again, to be clear, there are no allegations or causes of action in this case of any specific districts compelled by the VRA. Plaintiff need not allege a Section 2 claim to show that the Legislature admittedly and unapologetically flouted the North Carolina Supreme Court’s instruction by failing

racial discrimination) did not compel ANY districts under the VRA (and Plaintiff has not alleged in this case that the VRA effects test compels any such districts), the Legislature would still be obligated under the first step of *Stephenson* to examine racial data to ensure it avoids violations of Article I, Section 19. Such a reading of *Stephenson* is reinforced by the harmonizing intent expressly indicated by the North Carolina Supreme Court. *Stephenson I*, 355 N.C. at 393.

to consider any racial data or conduct any RPV analysis, even when made aware of harmful effects on Black voters.

41. In North Carolina, “[a]ll political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.” N.C. Const. art. I, § 2. Here, “the object of all elections is to ascertain, fairly and truthfully, the will of the people – the qualified voters,” and “the machinery provided by the law to aid in attaining the main object – the will of the voters . . . should not be used to defeat the object which they were intended to aid.” *Hill v Skinner*, 169 N.C. 405, 415 (1915) (quoting *R.R. v. Comrs.*, 116 N.C. 563, 568 (1895)). The Free Elections Clause in Article I, Section 10 of the North Carolina Constitution provides that “[a]ll elections shall be free,” and thus requires that elections be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. *See Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56, at *337 (N.C. Super. Ct. Sept. 3, 2019).

42. Partisan gerrymandering at its most basic level involves drawing legislative districts “to subordinate adherents of one political party and entrench a rival party in power,” with the effect of dismantling the fundamental precept of democracy that “voters should choose their representatives, not the other way around.” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 791, 824 (2015). It does so by systematically “packing” and “cracking” voters likely to support the disfavored party to dilute their voting power overall. *See Gill v. Whitford*, 138 S. Ct. 1916, 1935–41 (Kagan, J., concurring). Extreme partisan gerrymandering entrenches the political party in power, serving the interest of that political party over the public good, and systematically diluting and devaluing the votes of some citizens compared to others based on political affiliation. *See Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super.

LEXIS 56, at *339. Overall, extreme partisan gerrymandering prevents elections from ascertaining, fairly and truthfully, the will of the people, and thus violates the Free Elections Clause. *Id.*

43. And even more insidiously, in a state like North Carolina, where the Southern Strategy has been effective, and it is widely known that Black voters overwhelmingly prefer Democratic candidates, partisan gerrymandering is an act of racial discrimination in violation of the State Constitution. *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 222-24. Race and politics are inextricably intertwined in this State, and that is all the more reason for courts to reign in extreme partisan gerrymandering.

B. The Legislative Defendants Orchestrated a Redistricting Process that Contravenes Applicable Law, Causing an Inevitable Deprivation of Voters’ Rights.

1. The Redistricting Committees’ Adopted Criteria Contravene State Constitutional Requirements.

44. On Thursday, August 5, 2021, the Senate Committee on Redistricting and Elections convened a Joint Meeting of the Redistricting Committees to begin discussions about the redistricting process.⁵ Following this meeting, staff member Erika Churchill distributed to joint committee members the legislative redistricting criteria ordered by the North Carolina Superior Court for Wake County in its September 3, 2019 Judgment in the matter *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56 (the “2019 Criteria”).⁶

45. The 2019 Criteria set forth by the court specifically required that new maps comply with the VRA and other federal requirements concerning the racial composition of districts, and

⁵ *Joint Meeting of the Senate Redistricting and Elections Committee and the House Redistricting Committee to Begin Discussion on the Redistricting Process*, Aug. 5, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-05-2021/6683.pdf>.

⁶ E-mail from Erika Churchill, Staff Attorney, Legislative Analysis Division, N.C. General Assembly, to Joint Committee Members (Aug. 5, 2021).

required within 14 days of the order that the parties to submit briefing and expert analysis on whether VRA districts were required, including consideration of whether the minimum Black Voting Age Population “BVAP” thresholds were met to implicate the VRA. *Id.* at *417.

46. On Monday, August 9, 2021 the Redistricting Chairs released the “2021 Joint Redistricting Committee Proposed Criteria.”⁷ Contrary to the requirements of Article I, Sections 3 and 5 of the North Carolina Constitution, and the aforementioned court orders in *Stephenson v. Bartlett* and *Common Cause v. Lewis*, these criteria outright prohibited *all* formal use of racial data in redistricting, with no exceptions permitting the use of racial data to prevent vote dilution or comply with the VRA:

Racial Data. Data identifying the race of individuals or voters *shall not* be used in the construction or consideration of districts in the 2021 Congressional, House and Senate plans.⁸

47. The Redistricting Committees received public comment on the proposed criteria on Tuesday, August 10, 2021. Among those providing public comment were Plaintiff’s Counsel Allison J. Riggs, who described how the criteria prohibiting use of racial data was contrary to applicable law:

It is neither appropriate nor required to draw districts race-blind. As long as redistricting has occurred, it has been a tool used to harm voters of color. Beyond compliance with the VRA, it is entirely appropriate to advance race-equity to consider race in the drawing of districts, to ensure voters of color are not being packed or cracked. Additionally, in *Covington v. North Carolina*, this legislative body tried the same thing with respect to race-blind redistricting. A three-judge panel, including republican and democratic appointees, and a unanimous supreme court, rejected your race-blind remedial drawing of two senate districts and two

⁷ 2021 Joint Redistricting Committee Proposed Criteria, North Carolina General Assembly Joint Redistricting Committee, Aug. 9, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-09-2021/2021%20Joint%20Redistricting%20Committee%20Plan%20Proposed%20Criteria.pdf>.

⁸ *Id.* (emphasis in original).

house districts. In fact there is apparently not a federal judge out there who agrees with this approach and we urge you to abandon that criteria.⁹

48. On Thursday, August 12, 2021, the Redistricting Committees met to consider the proposed redistricting criteria and any amendments thereto. During debate on the proposed criteria, Senator Dan Blue stated that the court in *Stephenson* held that the first step of redistricting is determining whether districts are required to comport with the VRA and queried how this would be accomplished without the consideration of racial data. The Redistricting Chairs reiterated the view that consideration of racial data to evaluate whether VRA districts were necessary was not required but failed to explain how VRA compliance would be assessed absent that data.

49. Defendant Newton indicated that if any members presented evidence or new studies of RPV in North Carolina, the Chairs would be willing to examine that evidence.¹⁰

50. Defendant Daniel then proposed an amendment providing that “[t]he Committee will draw districts that comply with the Voting Rights Act,”¹¹ again failing to explain how this would or could be done without racial data or any analysis of racially polarized voting patterns. This amendment was adopted into the final criteria.

51. Senator Blue then proposed an amendment titled “Voting Rights Act,” adding the following criteria:

⁹ NCGA Redistricting, *2021-08-10 Committee (Joint)*, YOUTUBE, <https://youtu.be/QFA6QNpqWVWk?t=2084> (Aug. 10, 2021).

¹⁰ NCGA Redistricting, *2021-08-12 Committee (Joint)*, YOUTUBE, <https://youtu.be/gSm2OhE7SIk?t=10321> (Aug. 12, 2021).

¹¹ *Id.* at 2:58:00; *Amendment to Proposed Criteria #4 (Racial Data) Offered by Senator Daniel*, North Carolina Joint Redistricting Committee, Aug. 12, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-12-2021/Adopted%20Amendments/Racial%20Data.Daniel.pdf>.

As condemned by the United States Supreme Court in *Cooper v. Harris* and *Covington v. State of North Carolina*, African-Americans shall not be packed into any grouping or district to give partisan advantage to any political party.¹²

52. During debate on this amendment, Senator Blue again queried how it would be possible to comply with the VRA without consideration racial data. Senator Clark also repeated these concerns. In response, Defendant Daniel erroneously advised that prior case law, including a 2019 decision, in North Carolina did not require the use of racial data.¹³ The amendment offered by Senator Blue failed.

53. Upon information and belief, Defendant Daniel referenced the September 3, 2019 Judgment of the North Carolina Superior Court for Wake County in the matter *Common Cause v. Lewis*, Case No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56, to contend that racial data is not required to ensure compliance with the VRA this redistricting cycle. The court held no such thing. In *Common Cause v. Lewis*, the Superior Court struck down 2017 state Legislative plans as unlawful partisan gerrymanders that violated the Free Elections Clause of the North Carolina Constitution, Article I, Section 10. *Id.* at *333. In its analysis, the court explicitly held that “[a]ny Remedial Maps must comply with the VRA and other federal requirements concerning the racial composition of districts,” and afforded the parties the opportunity to “submit briefing . . . on whether the *Gingles* factors are met in particular counties and county groupings and/or the minimum BVAP needed in particular counties and county groupings for African-Americans to be able to elect candidates of their choice” *Id.* at *407–08. In other words, the court in *Common*

¹² *Amendment to Proposed Criteria (Voting Rights Act) Offered by Senator Blue*, North Carolina Joint Redistricting Committee, Aug. 12, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-12-2021/Proposed%20Amendments/Voting%20Rights%20Act.Amendment.pdf>.

¹³ NCGA Redistricting, 2021-08-12 Committee (Joint), YOUTUBE, <https://youtu.be/gSm2OhE7Slk?t=13039>, (Aug. 12, 2021).

Cause v. Lewis explicitly required the same analysis that Legislative Defendants are unlawfully chose to skip this cycle.

54. Furthermore, in subsequent orders addressing the remedial maps enacted in *Common Cause v. Lewis*, the court noted that the “need for such localized [RPV] analysis is particularly acute in North Carolina because . . . the existence and extent of white bloc voting varies widely across different county groupings.” Order Supplementing Court Order of October 28, 2019 with Findings and Conclusions Regarding Compliance of Remedial Maps with Federal Voting Rights Act at 4, *Common Cause v. Lewis*, Case No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56. Accordingly, any assertions that courts have definitely held there is no racially polarized voting in North Carolina, and that no RPV analyses are therefore necessary, are both factually and legally incorrect.

55. Hypothetically, it could be that that no districts were compelled by the effects test under Section 2 of the Voting Rights Act, but the Legislature’s process would still be problematic for two reasons:

- a. First, willful ignorance of racial data invites the destruction of effective crossover districts, and such willful exclusion of racial data suggests the consequences are intended – undermining Black voting strength. The intentional destruction of effective crossover districts, even though such districts are not compelled by the VRA, violates equal protection guarantees such as those in Article I, Section 19. *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009).
- b. Second, regardless of whether any districts are actually compelled by the effects test of the VRA, the North Carolina Supreme Court implicitly

demands that the Legislature ascertain whether such districts are compelled and draw the ones compelled. But the only way to know whether there are districts compelled by the effects test of the VRA is to conduct analysis of large populations of minority voters and whether there is racially polarized voting. The Legislature’s failure to even conduct any such analysis makes a mockery of the Supreme Court’s authority and precedent.

56. The final criteria adopted by the Redistricting Committees prohibited the use of any racial data in the 2021 redistricting process.¹⁴

2. The Legislative Defendants Mandate the Use of County Clusters That Contravene the North Carolina Constitution.

57. On August 12, 2021, the United States Census Data released block-level data showing North Carolina’s population increased from 9,535,483 residents in 2010¹⁵ to 10,439,388 residents in 2020.¹⁶ This 9.5 percent increase gave North Carolina an additional Congressional seat, raising its delegation from 13 members of the House of Representatives to 14 members, and thereby requiring the addition of one Congressional district.¹⁷

58. The North Carolina population increase reflected in the Census data was not evenly distributed throughout the state, with the vast majority of population increase occurring in urban

¹⁴ *Criteria Adopted by the Committees*, North Carolina Joint Redistricting Committee, Aug. 12, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-12-2021/Criteria.adopted.8.12.pdf>.

¹⁵ U.S. Census Bureau, *North Carolina: 2010: Population and Housing Unit Census* (2012), <https://www.census.gov/prod/cen2010/cph-2-35.pdf>.

¹⁶ *North Carolina: 2020 Census*, U.S. CENSUS BUREAU (Aug. 25, 2021), <https://www.census.gov/library/stories/state-by-state/north-carolina-population-change-between-census-decade.html>.

¹⁷ *2020 Census: Apportionment of the U.S. House of Representatives*, U.S. CENSUS BUREAU (Apr. 26, 2021), <https://www.census.gov/library/visualizations/2021/dec/2020-apportionment-map.html>.

and suburban areas.¹⁸ Without updating the district lines during the decennial redistricting process, North Carolina’s existing districts for the North Carolina House of Representatives and North Carolina Senate would be substantially unequal in population size and deviation.¹⁹

59. On Tuesday, October 5, 2021, the House Committee on Redistricting and the Senate Committee on Redistricting and Elections convened separately. In both meetings, the Redistricting Chairs announced in both chambers that they would be limiting the consideration of Senate and House maps to those drawn using county clusters described in the academic paper *N.C. General Assembly County Clusterings from the 2020 Census* (the “Duke Academic Paper”), published on the Duke University website “Quantifying Gerrymandering.”²⁰

60. The Duke Academic Paper states: “The one part of *Stephenson v. Bartlett* which this analysis does not reflect is compliance with the Voting Rights Act.”²¹

61. In the meeting of the Senate Committee on Redistricting and Elections, Defendant Hise provided the set of sixteen possible Senate cluster options, based upon the Duke Academic Paper, that would be required for any map to be considered for enactment (the “Duke Senate Clusters”). See “Duke Senate Groupings Maps 11x17.”²²

¹⁸ Tyler Dukes, *How Has Your NC Neighborhood Grown Since 2010? Use This Map of Census Data to Find Out*, NEWS & OBSERVER (Aug. 14, 2021), <https://www.newsobserver.com/news/local/article253375248.html>.

¹⁹ Rebecca Tippet, *Preview: What Redistricting Means for NC’s House*, CAROLINA DEMOGRAPHY (Aug. 2, 2021), <https://www.ncdemography.org/2021/08/02/preview-what-redistricting-means-for-ncs-house/>; Rebecca Tippet, *Preview: What Redistricting Means for NC’s Senate*, CAROLINA DEMOGRAPHY (Aug. 3, 2021), <https://www.ncdemography.org/2021/08/03/preview-what-redistricting-means-for-ncs-senate/>.

²⁰ Christopher Cooper et al., *NC General Assembly County Clusterings from the 2020 Census*, QUANTIFYING GERRYMANDERING (Aug. 17, 2021), <https://sites.duke.edu/quantifyinggerrymandering/files/2021/08/countyClusters2020.pdf>.

²¹ *Id.* at 1.

²² *Duke Senate Groupings Maps 11x17*, North Carolina Senate Redistricting and Elections Committee, Oct. 5, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/10-05-2021/Duke%20Senate%20Groupings%20Maps%2011x17.pdf>.

62. Senator Blue repeatedly asked how leadership had ensured compliance with the VRA, as required under the North Carolina Constitution, in the mandated clusters without any demographic analysis. Senator Marcus stated the committee needed to conduct an RPV study to ensure legal compliance. Defendant Hise confirmed the Chairs’ views that no demographic data was legally required, and that there was no directive to staff to order any RPV analysis or provide racial data to members drawing maps.²³

63. In the meeting of the House Committee on Redistricting, Defendant Hall provided the set of eight possible House cluster options, based upon the Duke Academic Paper, that constituted the set of options eligible for adoption (the “Duke House Clusters”). *See* “Duke House Groupings Maps 11x17.pdf.”²⁴ Defendant Hall stated that no maps that used cluster options other than the Duke House Clusters would be considered.

64. Representative Harrison questioned how the committee would comply with the VRA as the Duke Academic Paper stated its analysis did not reflect compliance with the VRA as required by *Stephenson*. Representative Reives inquired about the obligations under the VRA and how to comply with them. Defendant Hall stated the committees made a decision not to use racial data, contrary to redistricting criteria used in the previous two sessions, which Defendant Hall alleged to be “the best way” to ensure compliance with the VRA as well as other state and federal law.²⁵

²³ NCGA Redistricting, *2021-10-05 Committee (Senate)*, YouTube, <https://youtu.be/IphUZPhkqSY?t=2175>, (Oct. 5, 2021).

²⁴ *Duke House Groupings Maps 11x17*, North Carolina House Redistricting Committee, Oct. 5, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/House2021-182/2021/October%205.%202021/Duke%20House%20Groupings%20Maps%2011x17.pdf>.

²⁵ NCGA Redistricting, *2021-10-05 Committee (House)*, YouTube, https://youtu.be/9UsiS_6rlUA?t=7961 (Oct. 6, 2021).

3. The Legislature Is Notified that the Mandated County Clusters Violate North Carolina Law.

65. Three days after the proposed County Cluster Maps were publicly released, on Friday, October 8, 2021, counsel for Plaintiff sent a letter to Legislative Defendants informing them that the purportedly “race-blind” redistricting criteria adopted and the mandated county clusters violated well-established redistricting law (the “October 8 Letter”).²⁶ The October 8 Letter also informed Legislative Defendants of specific areas in the North Carolina Senate and House cluster maps that required examination for VRA Compliance, including:

- a. the Greene/Wayne/Wilson cluster “Q1” mandated by all 16 of the Senate Duke Cluster options;
- b. the Sampson/Wayne cluster “LL2” mandated in some of the House Duke Cluster options;
- c. the Camden/Gates/Hertford/Pasquotank cluster “NN1” mandated in some of the House Duke Cluster options.

66. Legislative Defendants failed to take any action in response to this letter and the highlighted harm to Black voters. This inaction is strong evidence of the Legislature’s racially discriminatory intent and its violation of the process requirements imposed by the *Stephenson* cases.

67. After draft Senate map, “SST-4”, was made publicly available on the North Carolina Legislature’s website (ncleg.gov),²⁷ counsel for Plaintiff sent a second letter to

²⁶ Letter from SCSJ Attorneys to Legislative Defendants, Oct. 8, 2021, https://southerncoalition.org/wp-content/uploads/2021/10/SCSJ-correspondence_NCGA-redistricting_2021.10.082.pdf.

²⁷ See *SST-4*, North Carolina Senate Redistricting Committee, Member Submitted Maps https://www.ncleg.gov/documentsites/committees/Senate2021-154/2021/Member%20Submitted%20Maps/SST-4/SST-4_19x36.pdf (last visited Dec. 12, 2021).

Legislative Defendants on Monday, October 25, 2021,²⁸ expressing concern that the cluster “Z1” chosen for this map from Duke Senate Clusters map “Duke_Senate 02” would obstruct the ability of Black voters to continue electing their candidate of choice. On Tuesday, October 26, 2021, Plaintiff Common Cause sent a letter to Legislative Defendants providing RPV analysis for Senate Districts 1 and 9 in map SST-4 that showed legally significant racially polarized voting in these proposed districts.

68. The Legislature hastily enacted the 2021 Enacted Maps shortly thereafter and with almost unprecedented speed, despite failing to announce any public deadline for the proposal or consideration of maps or timeline for enactment. Specifically:

- a. A proposed version of the state Senate map (“SST-13”) was filed on Friday, October 29, 2021 as Senate Bill 739 (“SB739”) and received its first reading in the Senate that day. It was then referred to the Senate Redistricting Committee on November 1 where the Redistricting Committee adopted a substitute along party lines (“SBK-7”). It then passed its second and third readings in the Senate by November 3 along party lines, and passed all three readings and the House Redistricting Committee without any alteration on November 3 – 4, 2021. SB739 was ratified into law on November 4 as S.L. 2021-173.
- b. A placeholder, blank version of the state House Map was filed on Thursday, October 28, 2021 as House Bill 976 (“HB976”) where it passed its first reading. A committee substitute (“HBK-14”) received a favorable review

²⁸ Letter from SCSJ Attorneys to Legislative Defendants, Oct. 25, 2021, <https://southerncoalition.org/wp-content/uploads/2021/10/SCSJ-Letter-Senate-Map-10-25-21-FINAL.pdf>.

and, after one amendment, passed its second and third readings on the House and its first reading in the Senate on November 2, 2021. It received a favorable report from the Senate Redistricting Committee on November 3, 2021 without alteration and passed its second and third readings on November 4, 2021. HB976 was ratified into law on November 4, 2021 as S.L. 2021-175.

- c. A proposed Congressional map (“CST-13”) was filed on October 29, 2021 as Senate Bill 740 (“SB740”) and passed its first reading and received a favorable report from the Senate Redistricting Committee on November 1, 2021. It proceeded unaltered through its second and third readings in the Senate and its first reading in the House on November 2, received a favorable report from the House Redistricting Committee on November 3, and proceeded unaltered through its second and third readings in the House on November 4, 2021. SB740 was ratified into law on November 4, 2021 as S.L. 2021-174.

69. In the rush to finalize maps, Legislative Defendants rejected or tabled multiple amendments offered by other Senate and House legislators intended to require assessment and, as appropriate, to ameliorate the harm that would result to voters of color from the Legislative Defendants’ redistricting process. Legislative Defendants also continued to defend the adopted criteria with inaccurate recitations of applicable law and mischaracterizations of fact. For example, in the meeting of the Senate Committee on Redistricting and Elections on November 2, Defendant Newton stated that “some have asked whether the *Stephenson* cases require that race be used in redistricting,” and then sought to justify the Legislative Defendants’ choice to prohibit use of racial

data by asserting that (1) subsequent case law held that use of racial data or analysis was not legally required, (2) *Stephenson* did not apply because Section 5 of the VRA is not currently enforceable, and (3) it was the duty of other members to propose plans with majority-minority districts (despite unequivocal direction from the Redistricting Chairs that *no plan would be considered if racial data had been used*).

70. Legislative Defendants’ flagrant disregard for the redistricting requirements set forth in *Stephenson* certainly confirms that their destruction of crossover districts that were providing Black voters with an opportunity to elect their candidate of choice was a willful and intentional act of racial discrimination in violation of the North Carolina Constitution. These bad acts are not merely abstract but will in fact cause harm to Black voters by reducing the number of districts in which they are effectively able to elect their candidate of choice, in violation of their rights to equal protection, and will frustrate the core missions of Plaintiff Common Cause to make government at all levels more representative, open, and responsive to the interests of ordinary people, including voters of color. Plaintiff forecast to Legislative Defendants that their members and other voters of color would specifically be harmed in *at least* the following areas, and this harm is still ensured given the districts drawn in the final maps proposed by Legislative Defendants and enacted in SB739 and HB976:²⁹

- a. Choice of Senate cluster “Z1”. The Duke Senate Clusters provided two potential cluster options for the “Z1” cluster in northeast North Carolina. The proposed Senate map “SST-4” (an early draft of the enacted SB739)

²⁹ Plaintiff does not concede that there may not be other clusters that raise VRA implications, but those are not the subject of this litigation, which only focuses on the racially discriminatory exclusion of racial data in the select of clusters that the Legislature defined as “legal” and the Legislature’s failure to do consider any racial data that is required by the NC Supreme Court in the *Stephenson* cases.

was drafted using the Duke Senate Cluster “Duke_Senate 02,” which eliminates an effective crossover district, thus obliterating the voting power of Black voters in this area of North Carolina, specifically in Senate District 1. The Legislature had the option to adopt a cluster comprised of Warren, Halifax, Martin, Bertie, Northampton, Hertford, Gates, Camden, Currituck, and Tyrell counties, with a BVAP of 42.33%, and were advised of this by Plaintiff’s counsel on October 25, 2021. While there is racially polarized voting in these counties, collectively and using reconstituted election results, this one-district cluster would have elected the Black-preferred candidate in recent statewide racially contested elections. However, the “Z1” cluster ultimately selected for inclusion in SB739 is comprised of Northampton, Hertford, Bertie, Gates, Perquimans, Pasquotank, Camden, Currituck, Tyrell, and Dare Counties, and dilutes the ability of Black voters to elect their candidates of choice. The BVAP in District 1 of SB739 using this cluster is only 29.49%. There is racially polarized voting in these counties which, collectively and using reconstituted election results, would not have elected the Black-preferred candidate in recent statewide, racially contested elections. Even without explicitly viewing racial data during drafting, any individual with passing familiarity with this area of North Carolina would understand that the choice of this “Z1” cluster in SB739 would destroy Black voters’ ability to continue electing their candidate of choice in a crossover district.

- b. House Cluster “KK2”. The Duke House Clusters provided two configurations for the group of six counties in southeast North Carolina (Wayne, Sampson, Duplin, Onslow, Pender, and Bladen). The 2019 House Remedial Map formed House District 21 from portions of Wayne and Sampson counties, which provided Black voters the opportunity to elect their candidate of choice at 39% BVAP. On October 8, 2021, Plaintiff’s counsel notified Legislative Defendants that House District 21 was providing Black voters the opportunity to elect their candidate of choice, and that it would be possible to create two House districts from the Wayne and Sampson County Cluster. Plaintiff’s counsel also notified Legislative Defendants that voting in Sampson and Wayne Counties was highly racially polarized and thus there was substantial evidence of legally significant racially polarized voting in this cluster. However, the enacted HB976 intentionally dismantled an effective cross-over district that allowed Black voters to elect their candidate of choice.

71. As illustrated above, each of these examples of Senate and House clusters required by the Committee Chairs, and enacted in SB739 and HB976, would deprive Black voters the opportunity to elect candidates of their choice. Under the purportedly “race-blind” criteria adopted by the Legislative Defendants, however, the deleterious consequences on BVAP has not, and in fact cannot, be directly and appropriately considered by the Redistricting Committees.

72. The racially discriminatory impact of this purportedly “race-blind” approach, in violation of Article I, Section 19 of the North Carolina Constitution, has a well-understood detrimental effect on Black representation. Overall, Legislative Defendants’ intentional racially

discriminatory actions will cause a drastic decrease in representation for Black voters in the North Carolina House and Senate, as well as Congress. Of the 12 Senate districts that currently provide a genuine and equitable opportunity for voters of color to elect their candidate of choice (who also identify as Black),³⁰ four – the districts electing Senator Ernestine Bazemore, Senator Toby Fitch, Senator Ben Clark, and Senator Sydney Batch – are unlikely or certain not to elect candidates of choice for voters of color under SB739.³¹ Of the 23 House districts that currently perform and provide a genuine and equitable opportunity for voters of color to elect their candidate of choice (who also identify as Black),³² five – the districts electing Representative Raymond Smith, Representative James Gailliard, Representative Linda Cooper-Suggs, Representative Howard Hunter II, and Represented Garland Pierce – are unlikely or certain not to elect candidates of choice for voters of color under HB976.³³ Of the two Congressional districts that currently perform and provide a genuine and equitable opportunity for voters of color to elect their candidate of

³⁰ Sen. Sydney Batch, current SD 17; Sen. Ernestine Bazemore, current SD 3; Sen. Dan Blue, current SD 14; Sen. Ben Clark, current SD 21; Sen. Don Davis, current SD 5; Sen. Milton F. “Toby” Fitch, current SD 4; Sen. Valerie Foushee, current SD 23; Sen. Natalie Murdock, current SD 20; Sen. Gladys Robinson, current SD 28; DeAndra Salavador, current SD 39; Sen. Joyce Waddell, current SD 40; and Sen. Paul Lowe, current SD 32. Available at: <https://www.ncleg.gov/Members/MemberList/S>.

³¹ Laura Leslie, *Minority Lawmakers Likely to Lose Out Under Partisan NC District Maps*, WRAL (November 8, 2021), <https://www.wral.com/minority-lawmakers-likely-to-lose-out-under-partisan-nc-district-maps/19969697/>.

³² Rep. Howard Hunter, current HD 5, Rep. Kandie Smith, current HD 8, Rep. Raymond Smith, current HD 21, Rep. Shelly Willingham, current HD 23, Rep. Linda Cooper-Suggs, current HD 24, Rep. James D. Gaillard, current HD 25, Rep. Vernetta Alston, current HD 29, Rep. Zack Hawkin, current HD 31, Rep. Terry Garrison, current HD 32, Rep. Rosa U. Gill, current HD 33, Rep. Abe Jones, current HD 38, Rep. Marvin W. Lucas, current HD 42, Rep. Garland Pierce, current HD 48, Rep. Robert T. Reives, current HD 54, Rep. Amos L. Quick, III, current HD 58, Rep. Cecil Brockman, current HD 60, Rep. Amber Baker, current HD 72, Rep. Terry M. Brown,, current HD 92, Rep. Nasif Majeed, current HD 99, Rep. Carolyn Logan, current HD 101, Rep. Brandon Lofton, current HD 104, Rep. Carla Cunningham, current HD 106, Rep. Kelly Alexander, current HD 107, Available at <https://www.ncleg.gov/Members/MemberList/H>.

³³ Laura Leslie, *Minority Lawmakers Likely to Lose Out Under Partisan NC District Maps*, WRAL (November 8, 2021), <https://www.wral.com/minority-lawmakers-likely-to-lose-out-under-partisan-nc-district-maps/19969697/>

choice (who also identify as Black),³⁴ one – the district electing Congressman G.K. Butterfield – is unlikely to elect candidates of choice for voters of color under SB740. This result could have been avoided had the General Assembly not flagrantly violated the redistricting process mandates issued by the North Carolina Supreme Court. Instead, functioning crossover districts were intentionally destroyed in violation of Article I, Section 19 of the North Carolina Constitution.

73. Significantly, while Legislative Defendants have tried to justify their actions by a purported and erroneous view that it will lower the risk of violations of federal law, they have not expressed the belief that undertaking the first step of *Stephenson* would automatically violate federal law. To the contrary, they have affirmed their belief that it is possible to comply with the requirements of both state and federal law, as set forth in *Stephenson*. For example, in a meeting of the Senate Redistricting Committee on Tuesday, October 5, 2021, Defendant Hise stated that “It is our position that you can comply with both laws at the same time” when asked about compliance with the VRA and the county clusters required by the Whole County Provision under *Stephenson*.

74. Relatedly, Legislative Defendants have also expressed the view that using race to draw maps is not a *per se* violation of federal law, but rather only impermissible if they did not first ensure the *Gingles* preconditions were satisfied before using race (as they failed to do last cycle and as determined by the court in *Covington v. North Carolina*, 316 F.R.D. 117, 176-78 (M.D.N.C. 2016), *summarily aff’d*, 137 S. Ct. 2211 (2017)). For example, in a meeting of the Senate Committee on Tuesday, November 2, 2021, Defendant Newton stated “if we draw districts using race, and we do not satisfy the *Gingles* preconditions, we risk violating the Equal Protections

³⁴ Rep. G.K. Butterfield, current CD 1, Rep. Alma Adams, current CD 12. Available at <https://www.congress.gov/members?q=%7B%22member-state%22%3A%22North+Carolina%22%2C%22congress%22%3A117%7D>.

Clause of the Fourteenth Amendment of the United States Constitution.” This statement acknowledges that, if the *Gingles* preconditions were satisfied, the use of race to draw districts would *not* violate the Equal Protections Clause and thus use of race in redistricting is not prohibited by federal law.

75. These views were reinforced by statements from counsel for Legislative Defendants during oral argument in the matter *North Carolina NAACP v. Berger*, in which counsel for Legislative Defendants asserted that Legislative Defendant were not required under law to ascertain what VRA districts are required nor to do any analysis of racial demographic data. *See* Transcript of 30 November 2021 Oral Argument, *NC NAACP v. Berger*, No. 21CVS014476 (Wake Cty. Super. Ct. Nov. 30, 2021) at p. 51 lines 15-17 (“There’s no affirmative duty on the Legislature to engage in any particular process to get a complaint VRA map.”), p. 49, lines 18-19 (“There’s no requirement that we [the Legislature] inform ourselves of that data to comply with the VRA.”), p. 50, lines 11-13 (“There’s been no formal [analysis to determine whether the maps are VRA compliant] . . . the Legislature hasn’t had a hearing or done anything like that. They’re not required to.”).

76. Accordingly, Legislative Defendants’ role in orchestrating a redistricting process that defiantly ignored the unequivocal directions of the highest court in this state is not based upon the belief that doing so would be inconsistent with federal law, including the Equal Protection Clause of the Fourteenth Amendment. Rather, it is based upon an erroneous legal view that the first step of *Stephenson* is not required at all.

C. The Legislative Defendants Have Continued to Partisan Gerrymander State Legislative and Congressional Maps to Further Entrench Their Party in Power.

1. The North Carolina Republican Party Has a Long History of Passing Redistricting and Election-Related Laws to Ensure Political Entrenchment and Frustration of the Ability of North Carolina Voters to Elect Their Candidates of Choice.

77. While the mechanics, justifications, and legal arguments have all shifted as strategies and tactics have changed, one dynamic has remained constant: the North Carolina Republican Party’s relentless efforts to insulate their political power from the will of the people of North Carolina.

78. In 2010, the North Carolina Republican Party took unified control of the North Carolina General Assembly for the first time since 1870. No sooner were their newfound majorities sworn in than they started working to entrench those majorities, using discriminatory redistricting processes and changes in election laws to place their political power beyond the reach of North Carolina voters. Many of these efforts have been challenged in both state and federal court, and many of these efforts have been struck down by those same courts. While the specific claims at issue have shifted over time, the overall thrust of these cases is clear: the North Carolina Republican Party attempting to entrench its power, by any means necessary, in violation of applicable law. Plaintiff Common Cause’s claims in this case are only the latest episode in this saga.

79. The majorities that precipitated the North Carolina Republican Party’s unlawful political entrenchment were rooted in partisan machinations from the beginning. In 2010, the North Carolina Republican Party, in coordination with the Republican National Committee, targeted the North Carolina General Assembly via their “REDistricting Majority Project,” or “REDMAP.” REDMAP sought to identify opportunities to take control of state legislatures throughout the

country ahead of the 2011 decennial redistricting process, in order to use that newfound control to gerrymander maps in favor of Republican candidates.

80. REDMAP was wildly successful, with Republicans winning 18 of the 22 North Carolina House and Senate races targeted in 2010, and giving Republicans control of the both chambers of the General Assembly for the first time since 1870.

81. Republican leadership in the General Assembly immediately put these REDMAP-powered majorities to work in the 2011 redistricting process. Working out of the basement of the North Carolina Republican Party headquarters, a team led by Tom Hofeller drew legislative maps in secret. The goal was clear: to ensure durable Republican majorities in each legislative delegation, regardless of the desires of North Carolina voters.

82. The REDMAP-derived Republican majorities passed the Hofeller-drawn plans without a single Democrat in support, with the express goal of entrenching Republican legislative dominance. The 2011 plans did exactly that. In elections in 2012, 2014, and 2016, the percentage of seats won by Republicans in the House, Senate, and Congressional delegations greatly exceeded the Republican vote share statewide. The 2011 state Legislative plans were struck down as unconstitutional racial gerrymanders in *Covington v. North Carolina*, 316 F.R.D. at 176-78. The *Covington* court found that the Legislature's proffered explanation for the maps as necessary for Voting Rights Act compliance was unjustified. *Id.* at 168-69. The U.S. Supreme Court summarily affirmed this decision. 137 S. Ct. 2211 (2017). A similar finding was made concerning two Congressional districts in *Harris v. McCrory*, 159 F. Supp. 3d 600, 604 (M.D.N.C. 2016), and was also affirmed by the U.S. Supreme Court. *Cooper v. Harris*, 137 S. Ct. 1455, 1481-82 (2017).

83. In the immediate aftermath of the *Covington* decision, before remedial maps undoing the unconstitutional gerrymanders could be passed, the Republican-dominated General

Assembly reached for alternate means to entrench their political power. The day after the Supreme Court affirmed the *Covington* decision, the General Assembly placed a constitutional amendment on the ballot to authorize a voter ID law in North Carolina. The amendment was rife with procedural irregularities, including complete silence as to implementation of the amendment. After the amendment referendum narrowly passed, the outgoing legislature (and its soon-to-disappear Republican supermajority) passed racially discriminatory legislation implementing the amendment. This legislation was vetoed by the Governor, but the Governor's veto was subsequently overridden in a last act of the Republican supermajority in a lame duck session just before a legislature elected under remedial maps would enter office. The amendment was later struck down as intentionally discriminatory on the basis of race. Final Judgment and Order, *Holmes v. Moore*, No. 18-CVS-15292 (N.C. Sup. Ct. Sept. 17, 2021).

2. After the 2011 Plans Were Struck Down, the Legislature Drew Remedial Maps in 2017 and Again Attempted to Entrench Their Political Power.

84. The Legislature sought to defend the subsequently enacted 2017 Plans exclusively as partisan gerrymanders. Republican leaders made repeated public statements about their partisan intentions, and grounded their legal defense of the maps in the theory that partisan gerrymandering was explicitly allowable under both the U.S. and North Carolina Constitutions. After a two-week trial, a three-judge panel struck down the 2017 state Legislative maps as unconstitutional partisan gerrymanders. *Common Cause v. Lewis*, 2019 N.C. Super. LEXIS 56, at *404-05. Shortly thereafter, the 2017 Congressional maps were also enjoined as unconstitutional partisan gerrymanders. *Harper v. Lewis*, 2019 N.C. Super. LEXIS 122, at *24-25 (N.C. Sup. Ct. Oct. 28, 2019).

3. The Legislative Defendants Have Continued This Cycle of Gerrymandering By Enacting Partisan Gerrymandered State Legislative and Congressional Maps.

85. The 2021 Enacted Maps all passed along party lines. The State House map, HB976, passed the House on a strict party line vote, with 67 Republican Representatives in favor and 49 Democratic Representatives opposed. HB976 also passed the Senate on a strict party line vote, with 25 Republican Senators in favor and 21 Democratic Senators opposed.

86. The State Senate map, SB739, passed the Senate on a strict party line vote, with 26 Republican Senators in favor and 19 Democratic Senators opposed. SB739 also passed the House on a strict party line vote, with 65 Republican Representatives in favor and 49 Democratic Representatives opposed.

87. The Congressional map, SB740, passed the Senate on a strict party line vote, with 27 Republican Senators in favor and 22 Democratic Senators opposed. SB740 also passed the House on a strict party line vote, with 65 Republican Representatives in favor and 49 Democratic Representatives opposed.

88. Each of the maps were enacted with the intent to dilute the vote of and impede voters who support candidates not in the majority party in the General Assembly from electing their candidate of choice.

89. Each of the enacted maps will have an extreme and durable discriminatory effect on voters who prefer Democratic candidates.

90. The extreme partisan outcomes produced by each of the challenged maps cannot be explained by any neutral reason.

D. The Three Challenged Maps Were Enacted with the Intent to Discriminate Against Voters Who Support Democratic Candidates.

91. Legislative Defendants’ claims that they did not use political data are belied by the fact that simulations demonstrate that plans produced without partisan data almost never produce the outcomes seen in the enacted plans.

92. Moreover, Legislative Defendants acknowledged they would not be enforcing the “rule” that partisan and racial data not be used. Upon information and belief, numerous Republican legislators brought with them into the map-drawing room papers upon which they relied in drawing district lines on the public terminals, and the poor audio quality of the livestream made it impossible for the public to hear many of the conversations held between Republican legislators and their staffers.

93. Given the Legislative Defendants’ defiant rejection of the rules the North Carolina Supreme Court has imposed on redistricting; the inconsistency between their claims of a transparent process with the opacity of the process that actually occurred; and their failure to meaningfully exclude members from using political data, an inference of improper intent is supported by the circumstantial evidence.

Congressional Districts at Issue

94. The Congressional map (SB740) demonstrates cracking and packing of Democratic-performing areas that would not be possible without utilizing political data (or a deep familiarity with the politics of certain areas, which belies the claims of not using any partisan data).

95. While the entire design of the Congressional map is necessary to effectuating the unconstitutional and discriminatory effect orchestrated by Legislative Defendants, the following districts exemplify the packing and cracking strategies used – strategies that highlight the intentional manipulation of district lines in order to achieve unconstitutional goals.

96. In Congressional District 2, the Legislature purposefully excluded Greenville in Pitt County – despite splitting Pitt County to include a microscopic portion of the county in District 2 – in order to undermine Democratic and Black voting strength in this Congressional District. Substantial portions of Greenville, a heavily Black and Democratic city widely known as such to anyone with a passing familiarity of the state’s political geography, have historically been included in that Congressional district, long represented by the candidate of choice of Black voters even though it has, for years, never needed to achieve majority-Black status in order to provide Black voters the opportunity to elect their candidates of choice.

97. Instead of including Greenville, as has historically been done, the Legislature instead chose to add Caswell and Person Counties to Congressional District 2, counties that are overwhelmingly White and overwhelmingly Republican. Again, to believe that map drawers would not be aware of the racial and political implications of this significant change would require abandonment of all common sense and logic, and an assumption that North Carolina legislators do not understand the state’s political geography at all.

98. These changes to Congressional District 2 dramatically reduce the BVAP in the district, from 42.38% to 39.99%, likely destroying a functioning crossover district and dramatically decreasing the Black political performance of the district, leading the Cook Political Report to list this district as a “Toss Up.”³⁵

99. Likewise, in Congressional District 4, the Sandhills counties of Cumberland and Sampson Counties are joined with non-Sandhill counties of Harnett and Johnston Counties, which are Triangle suburb counties, and a heavily Republican portion of Wayne County. This decision

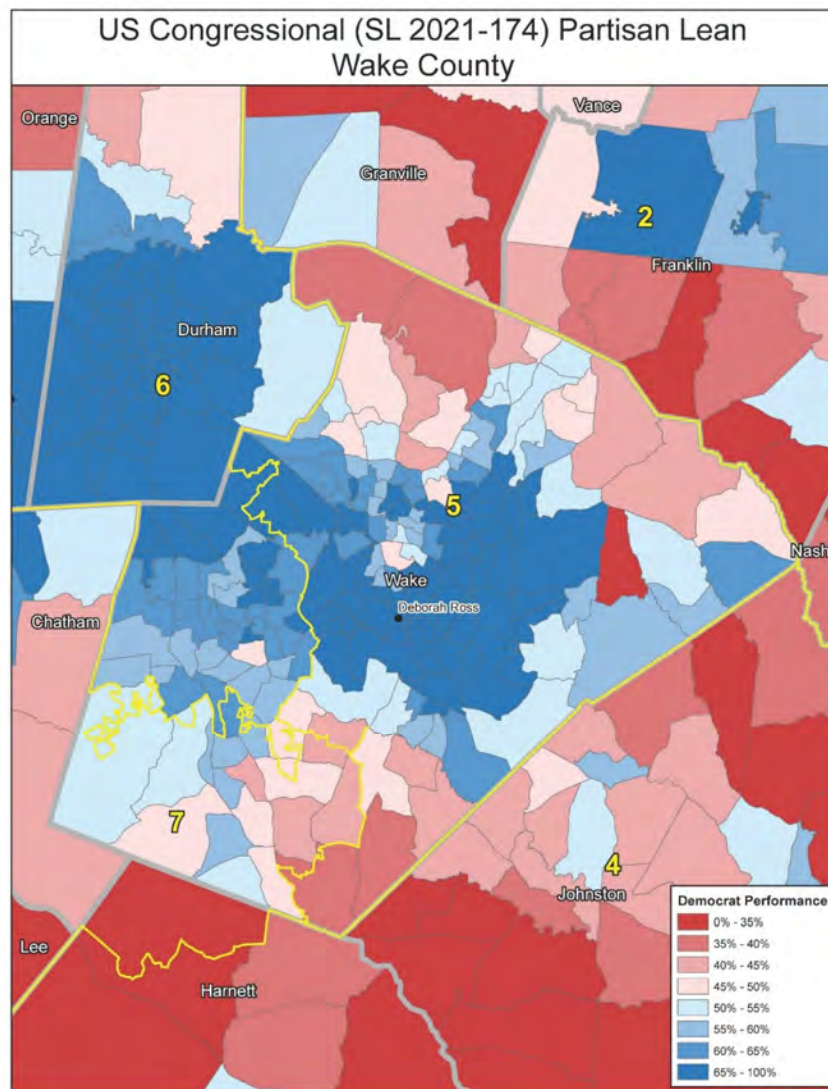
³⁵ Cook Political Report, *2022 House Race Ratings* (Dec. 9, 2021), <https://www.cookpolitical.com/ratings/house-race-ratings> (last visited Dec. 10, 2021).

effectively frustrates the ability of Democratic and Black voters in Fayetteville (Cumberland County), widely known to be such, by submerging those voters within a district of heavily White and conservative areas. In court-ordered remedial districts in 2016 and 2019, Cumberland County was never joined with Harnett or Johnston Counties.

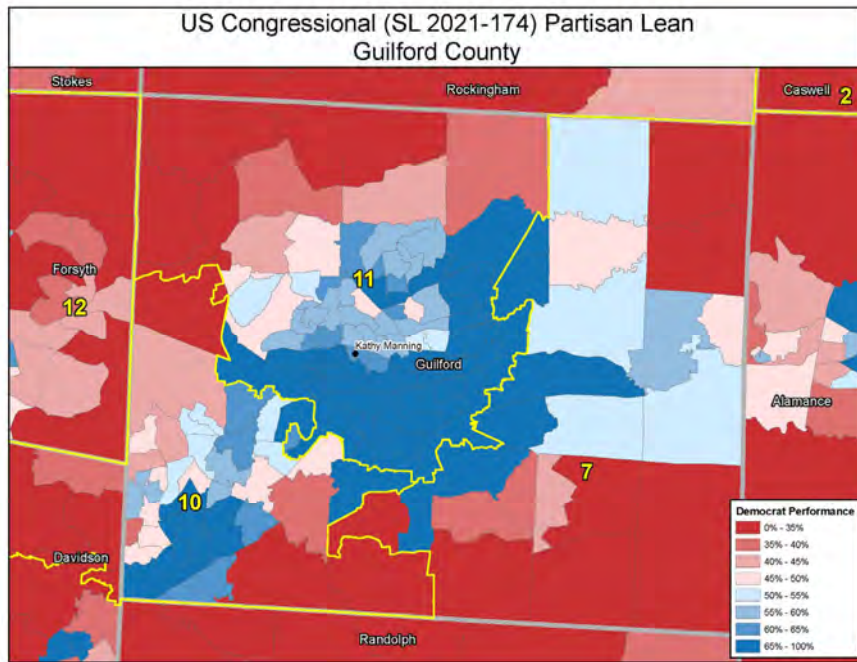
100. The Triangle region was subject to extreme packing and cracking in order to effectuate partisan gerrymandering in that region. Wake County, which is overwhelmingly Democratic, is split into 3 different districts in order to prevent the natural emergence of a third Democratic leaning district in the county.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

101. The image below demonstrates that Democratic voters are packed into Congressional District 5. The remainder of Democratic voters in the county are cracked, with half being assigned to the already heavily Democratic district (Congressional District 6) based in Orange and Durham County and the rest being stranded in a Republican-leaning, Triad-based district (Congressional District 7). Such surgical packing and cracking would not be possible without partisan data and an intense familiarity with the political characteristics of the precincts in Wake County – familiarity that Legislative Defendants had.

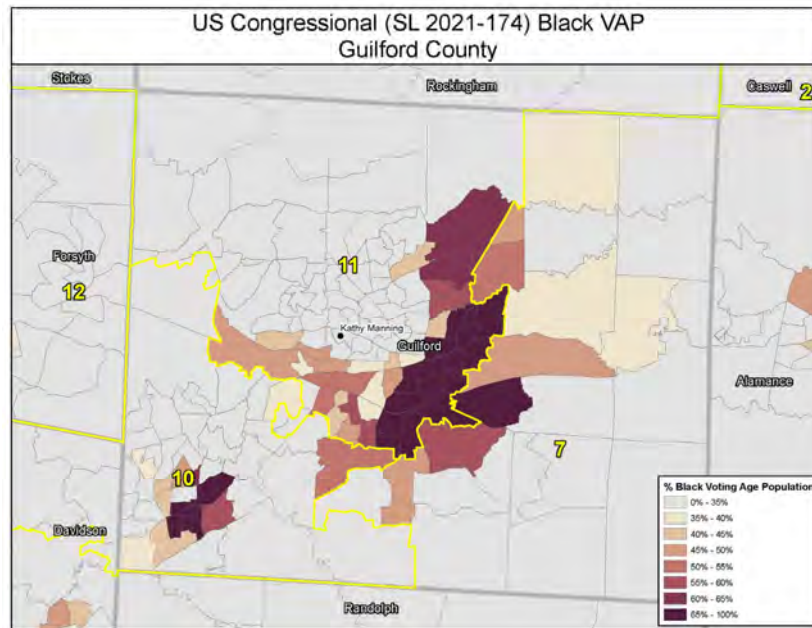


102. The Triad region saw some of the most egregious cracking strategies and gross disregard for communities of interest. As the image below demonstrates, the heavily Black and heavily Democratic Guilford County was cracked into 3 districts – Congressional District 11, Congressional District 7 and Congressional District 10.



[REST OF PAGE INTENTIONALLY LEFT BLANK]

103. The cracking of Black voters in Guilford County was also done with near surgical precision and presents strong evidence of the Legislative Defendants’ intentional racial discrimination in violation Article I, Section 19.³⁶

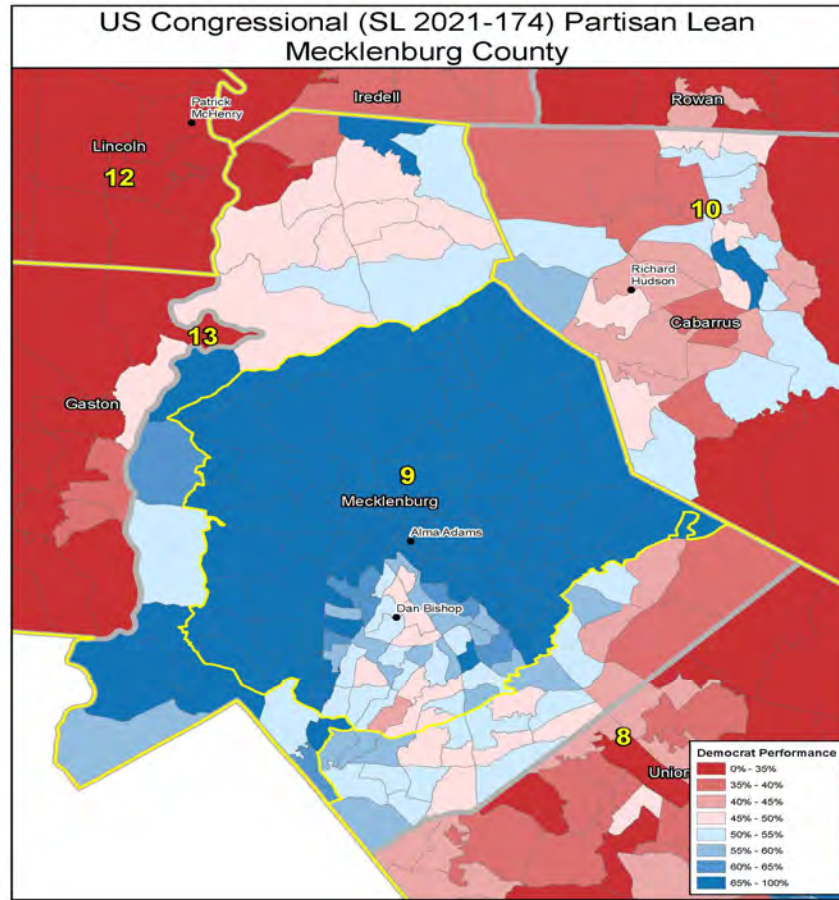


104. Black and Democratic voters are stranded in Republican districts reaching, to the west, out to Watauga County and, to the east, into Wake County – regions that have nothing in common with Guilford County. This cracking also belies the expected defense that maps that favor Republicans are caused by the fact that Democrats choose to congregate in urban areas. If those areas are egregiously cracked, as seen above, that plainly cannot be a plausible, non-discriminatory reason for the extreme partisan outcomes produced by the enacted Congressional maps.

105. In Mecklenburg County, a pattern of cracking and packing emerges as Democratic voters were packed into Congressional District 9 and cracked between the remaining two Republican leaning Congressional Districts 8 and 13. Such surgical packing and cracking would

³⁶ Plaintiff does not allege that the VRA compelled the drawing of any district in Guilford County, but that does not give the Legislature free reign to crack Black voting populations in order to frustrate their political voice.

not be possible without partisan data and an intense familiarity with the political characteristics of the precincts in Mecklenburg County – familiarity that Legislative Defendants had.



106. Plaintiff Common Cause has members who are voters who identify as Black in each of the above districts.

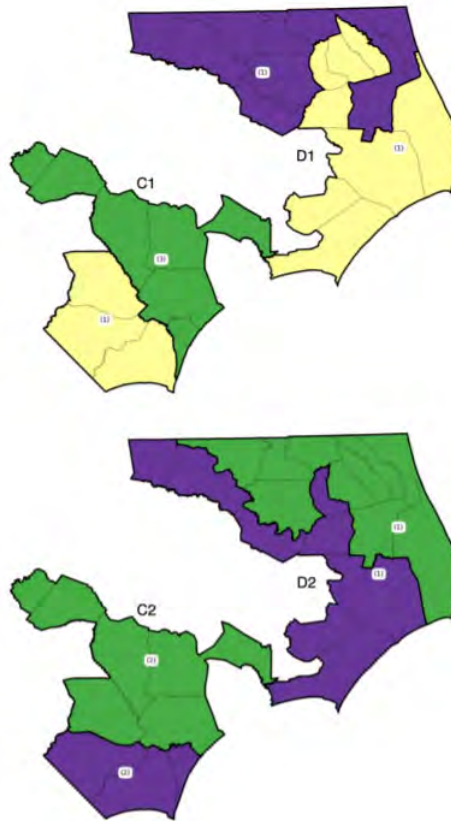
107. Plaintiff Common Cause has members who are voters who prefer Democratic Congressional candidates in each of the above districts.

Senate Districts at Issue

108. The Senate Map demonstrates cracking and packing of Democratic-performing areas that would not be possible without political data (or a deep familiarity with the politics of certain areas, which belies the claims of not using any partisan data).

109. While the entire design of the Senate map is necessary to effectuating the unconstitutional and discriminatory effect orchestrated by Legislative Defendants, the following districts exemplify the packing and strategies used – strategies that highlight the intentional manipulation of district lines in order to achieve the unconstitutional goals. They likewise demonstrate the racially discriminatory efforts at play.

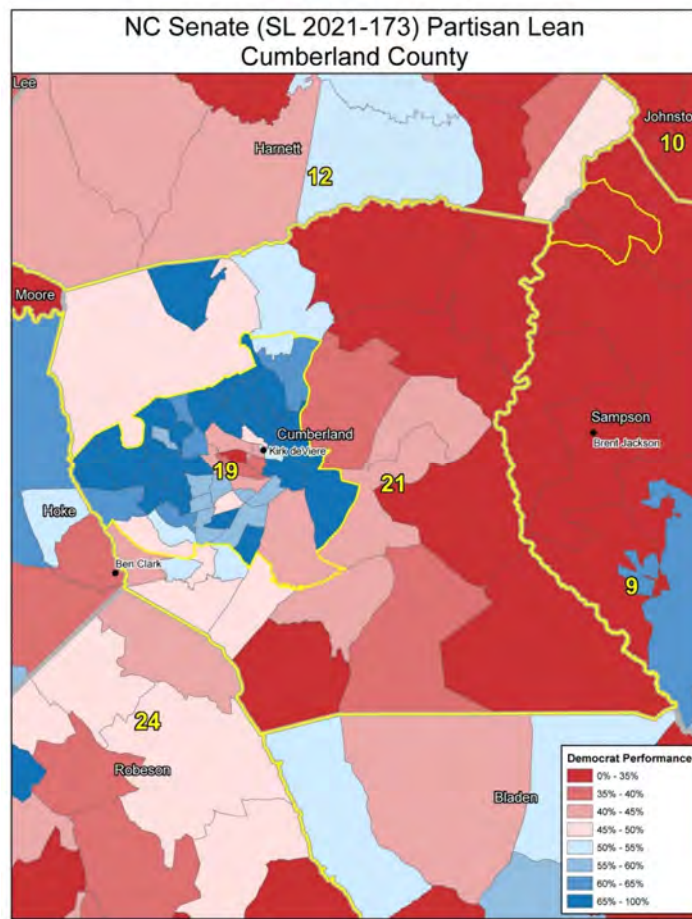
110. The Legislature was presented with two possible clusters for a district in Northeast North Carolina (for a seat currently held by Sen. Ernestine Bazemore). The two cluster options are represented below:



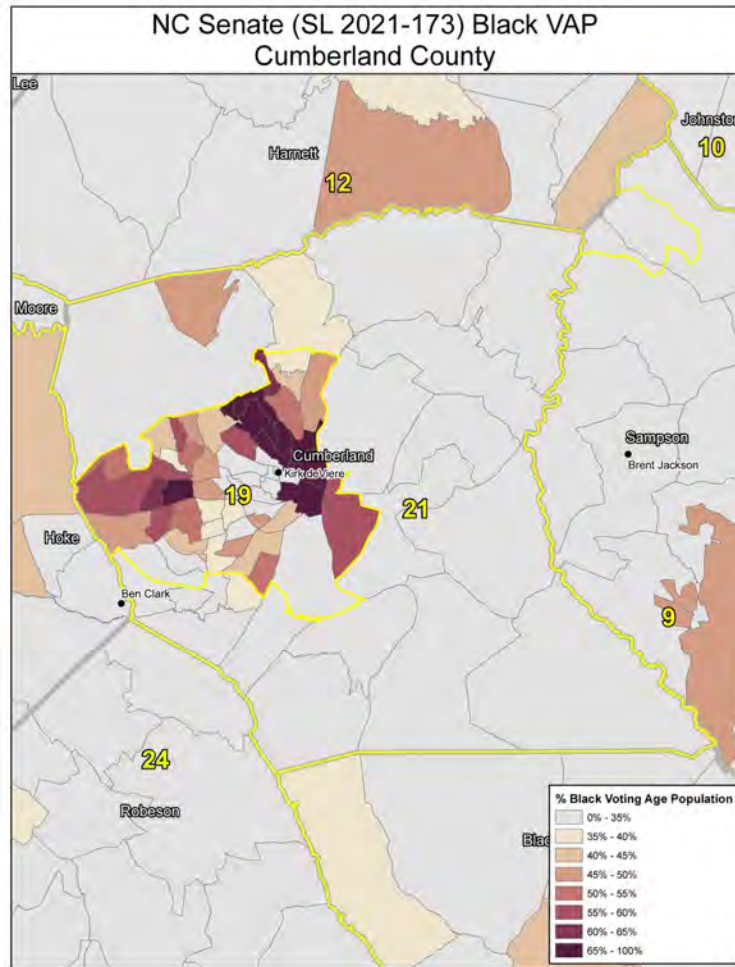
111. Legislative Defendants asserted that both cluster options were legal. The cluster at the top (D1, which includes Carteret, Pamlico, Washington, Chowan, Hyde, Dare, Perquimans, and Pasquotank counties) would have maintained a performing crossover district that allowed

Black voters to elect their candidate of choice in eastern North Carolina. The cluster below (D2, which includes Carteret, Pamlico, Washington, Chowan, Hyde, Martin, Halifax, and Warren counties) would destroy the ability of Black voters to elect their candidate of choice and ensure the defeat of their current preferred representative, Senator Bazemore. Legislative Defendants were warned that the selecting the second cluster would dramatically reduce the BVAP in the district and would destroy an effective crossover district. They destroyed it anyway, and offered no other justification.

112. Cumberland County presents another example where heavily Black and heavily Democratic areas were packed and cracked with near-surgical precision to create Senate Districts 19 and 21.

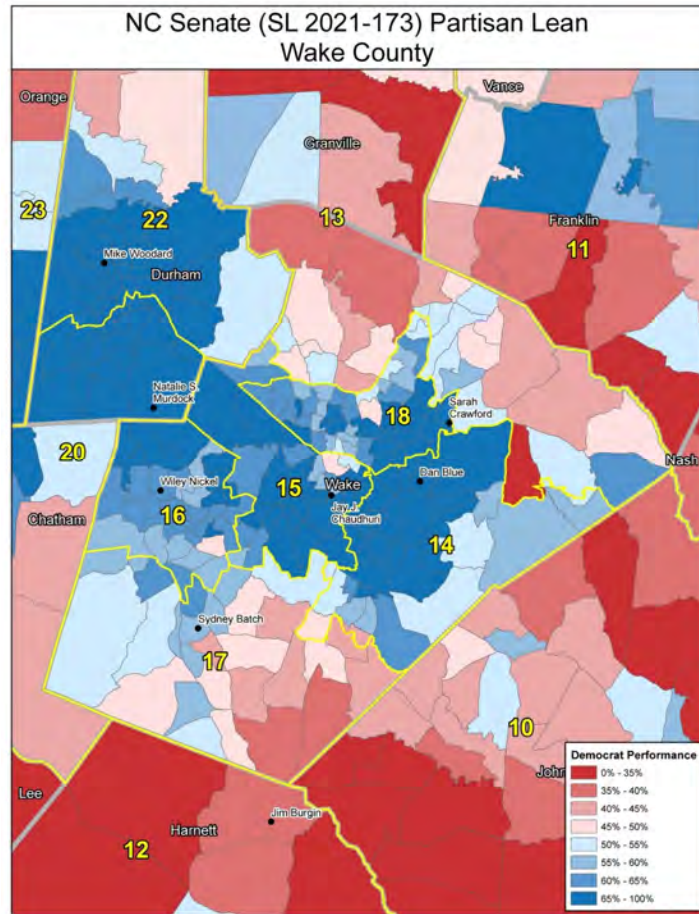


113. The correlation of these lines to the make-up of BVAP also presents strong evidence of intentional racial discrimination in violation of Article I, Section 19.



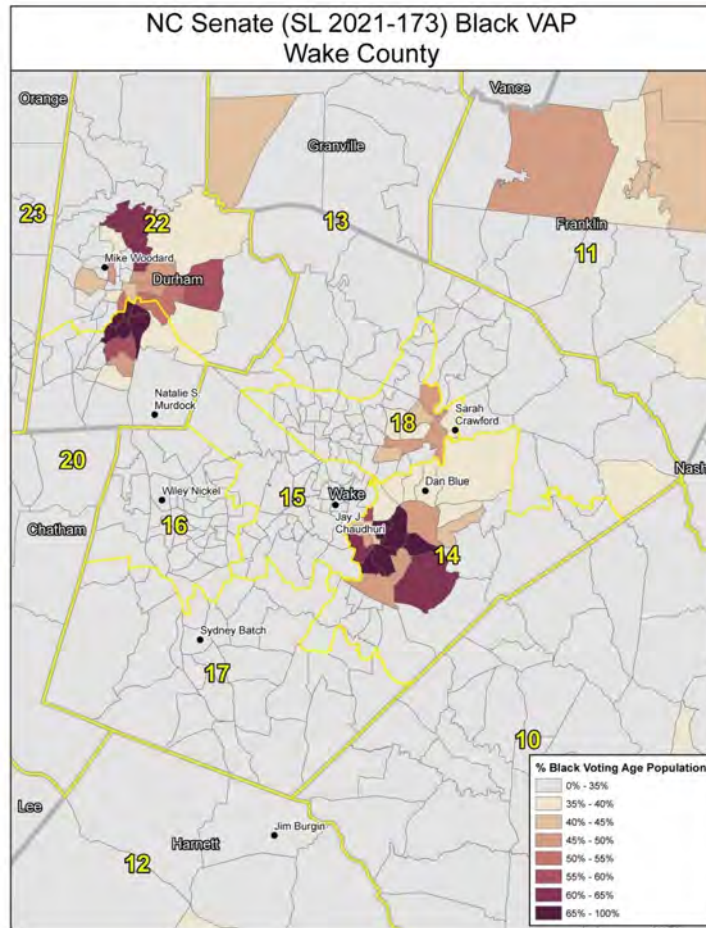
[REST OF PAGE INTENTIONALLY LEFT BLANK]

114. In Wake County, the Legislature drew Senate districts that cracked Democratic voters into various senate districts (SD 15, 16, 17) within the county, while packing them into others (SD 14). This would only be possible with the utilization of political data or a deep familiarity with the political makeup of Wake County, either of which belies the Legislative Defendants’ claims that partisan data was not used to draw districts.



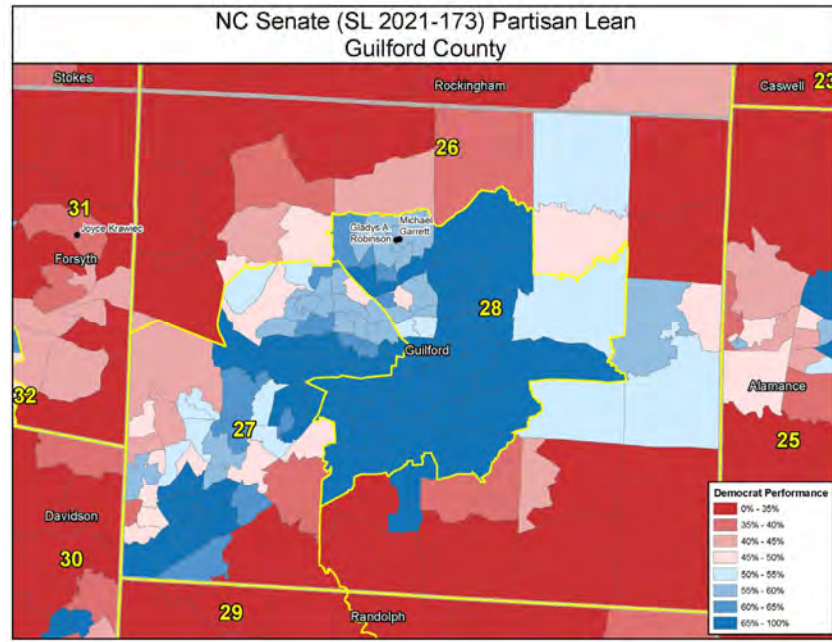
[REST OF PAGE INTENTIONALLY LEFT BLANK]

115. The Legislature also drew maps that explicitly followed the contours of the Black electorate in Wake County, especially in Senate District 14 and Senate District 18. The precise way that these districts were drawn is only possible by looking at racial data.

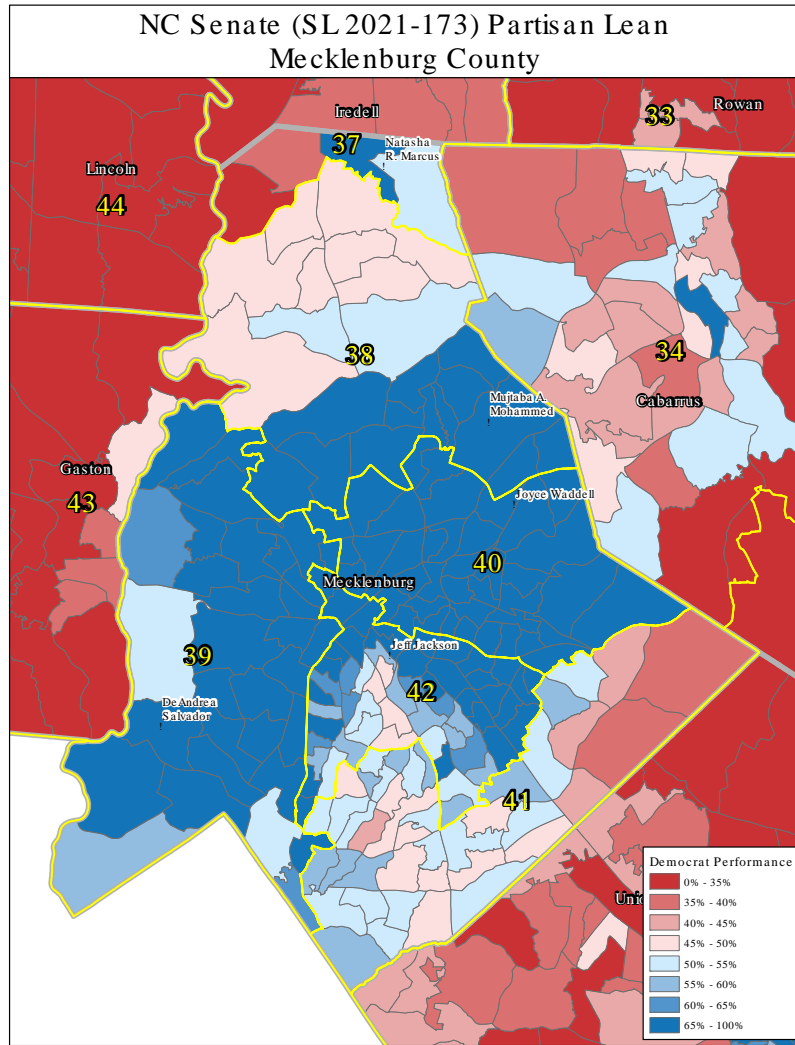


[REST OF PAGE INTENTIONALLY LEFT BLANK]

116. In Guilford County, the Legislature also surgically cracked Democratic voters into various Senate districts (SD 27 and 28) in a manner that is not possible without looking at political data.



117. In Mecklenburg/Iredell Counties, map drawers intentionally double-bunked Senator Marcus in Senate District 37, which leadership later unsuccessfully attempted to use as a bargaining chip to garner Democratic support for their gerrymanders. Map drawers also purposefully drew two Republican-influence districts in the north and south of Mecklenburg County first, and then proceeded to pack all remaining Democratic areas together, in order to increase the influence of Republican voters overall.

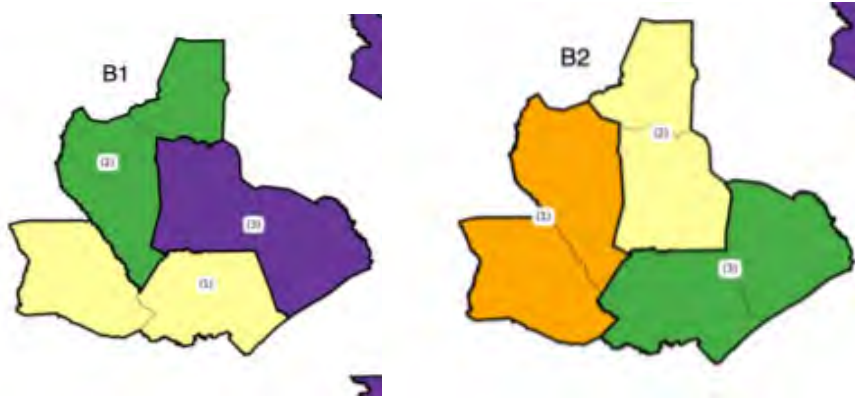


State House Districts at Issue

118. The State House Map demonstrates cracking and packing of Democratic-performing areas that would not be possible without political data (or a deep familiarity with the politics of certain areas, which belies the claims of not using any partisan data).

119. While the entire design of the State House map is necessary to effectuating the unconstitutional and discriminatory effect orchestrated by Legislative Defendants, the following districts exemplify the packing and strategies used – strategies that highlight the intentional manipulation of district lines in order to achieve the unconstitutional goals. They likewise demonstrate the racially discriminatory efforts at play.

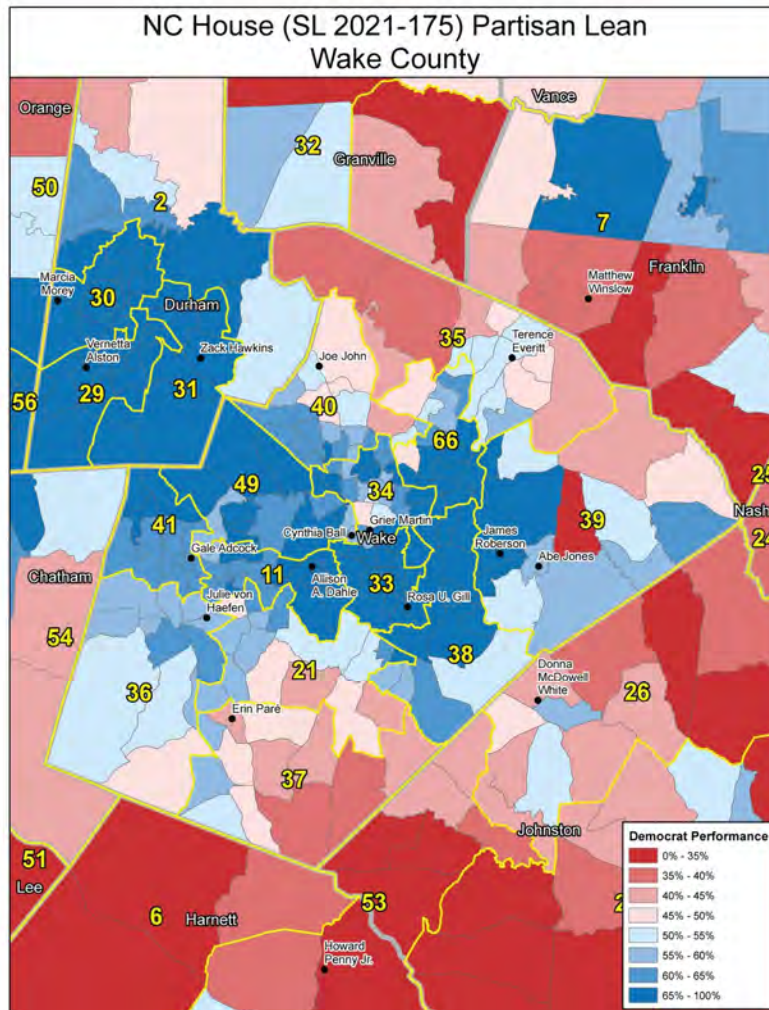
120. The Legislature was presented with two possible clusters for a House district based in Wayne County (for a seat currently held by Rep. Raymond Smith). The two cluster options are represented below:



121. Legislative Defendants asserted that both cluster options were legal. The cluster to the right (B2) would have had a better chance of maintaining a performing crossover district that allowed Black voters to elect their candidate of choice and would have better respected communities of interest. The cluster to the left (B1) would destroy the ability of Black voters to elect their candidate of choice and ensure the defeat of their current preferred representative, Representative Smith. Legislative Defendants were warned that the selecting the cluster on the left would reduce the BVAP in the district and would destroy an effective crossover district. They destroyed it anyway.

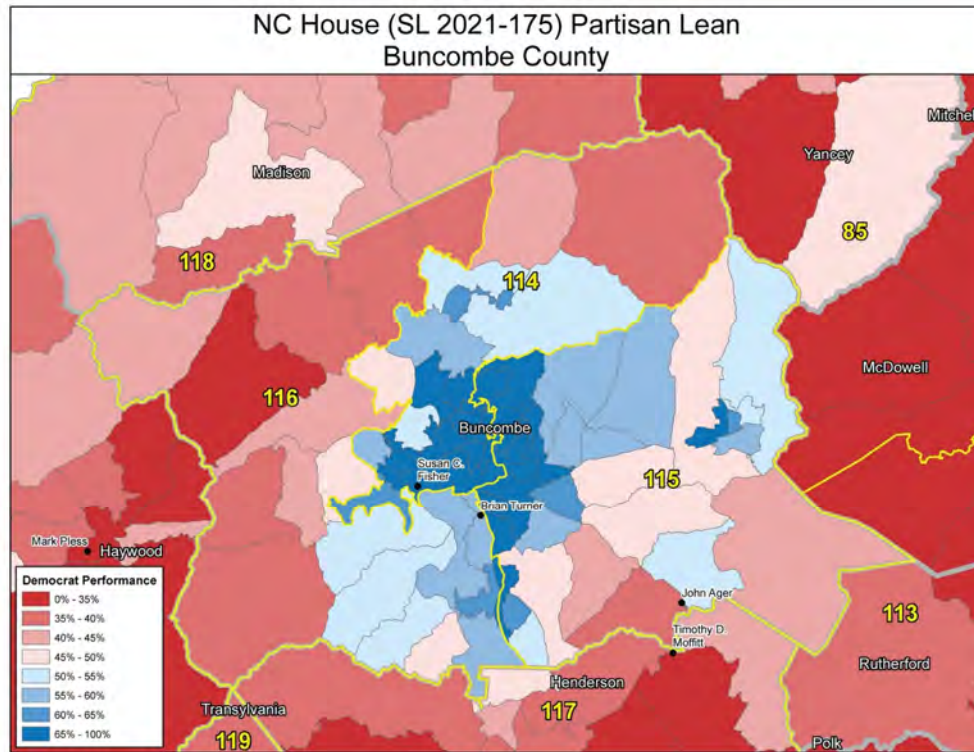
[REST OF PAGE INTENTIONALLY LEFT BLANK]

122. In Wake County, House District 35 also demonstrates all the hallmarks of a partisan gerrymander. While the district is still anchored in Wake Forest, the district shifted substantially to capture the most conservative VTDs in this part of Wake County. It is simply not plausible that such a district, presenting one of the few configurations of VTDs that would enable a Republican to win in north Wake County, was created without relying on partisan data.

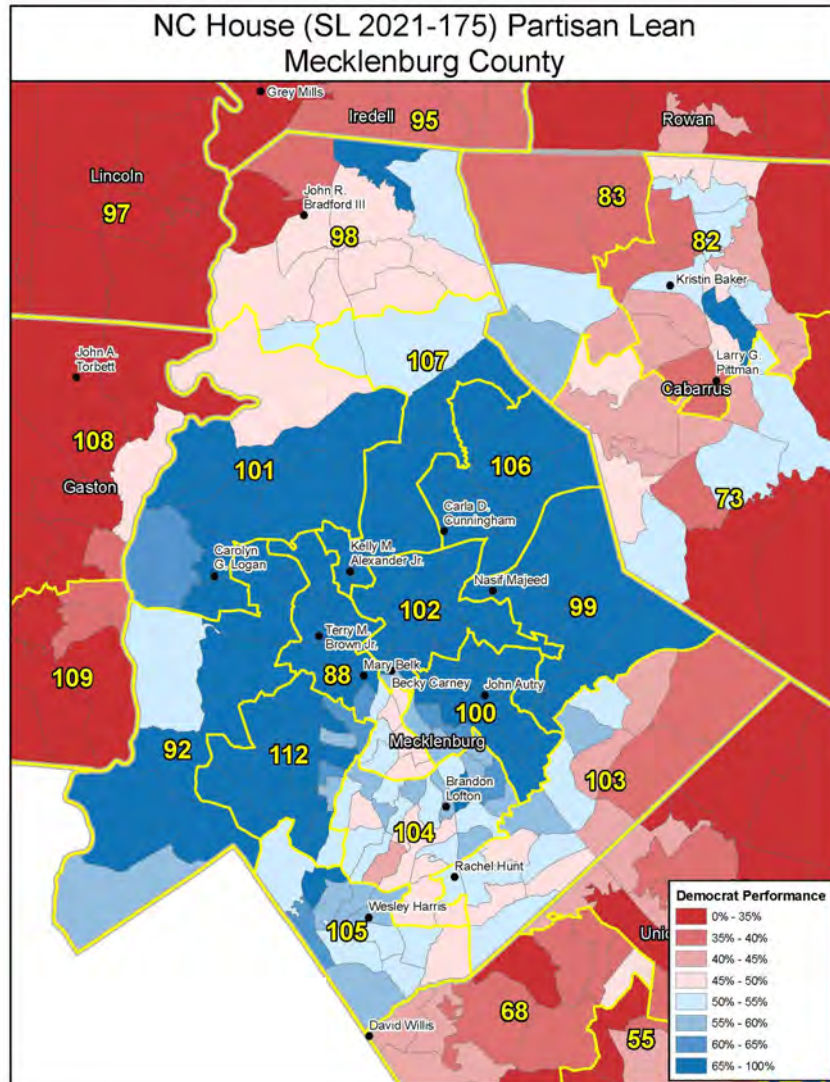


123. In Buncombe County, Legislative Defendants drew House Districts 114, 115, and 116 along precise partisan lines to give Republicans an opportunity to win one of the county's three districts. In order to achieve this, House District 116 loops around the perimeter of the county, staying out of Asheville in order to sweep up the most Republican-leaning areas. The degree to

which House District 116 steers clear of predominantly Democratic VTDs would not be possible without considering partisan data.

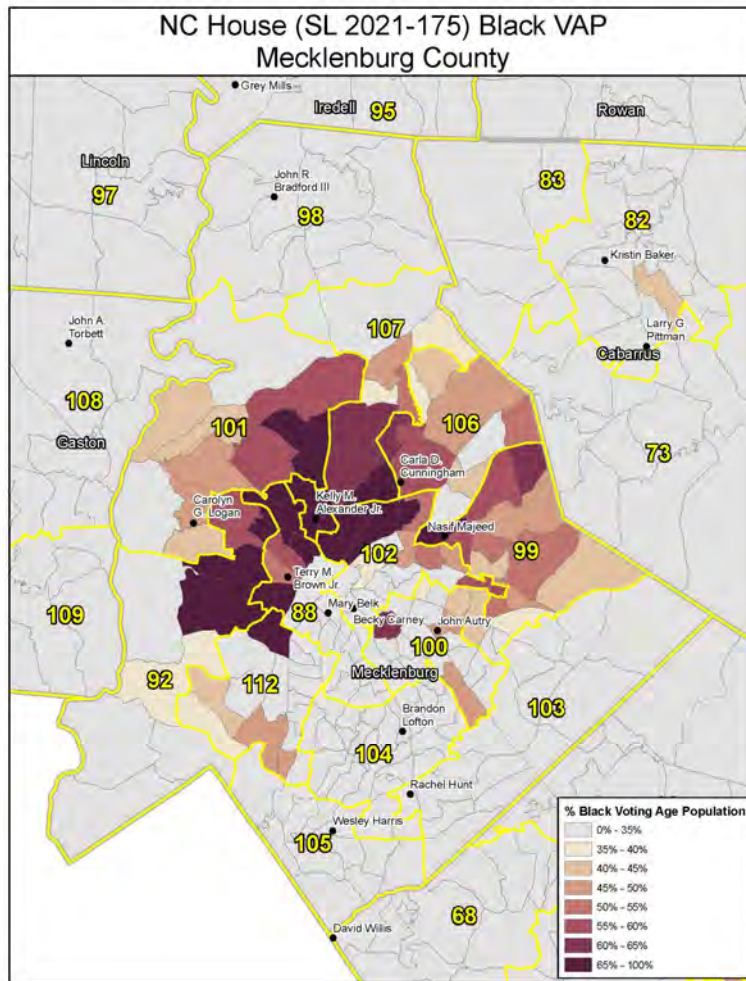


124. In Mecklenburg County, the House district lines closely mirror the partisan breakdowns of the county, particularly at the northern and southern ends of the county. House District 98 in the northern part of the county skirts around Democratic VTDs to keep the district as Republican as possible; House District 103 does the same along the southern border of the county. House District 104 also weaves through southern Mecklenburg County, picking up as many Republican-leaning VTDs as possible to give Republicans a chance to win the district. None of these configurations would be possible without considering partisan data.

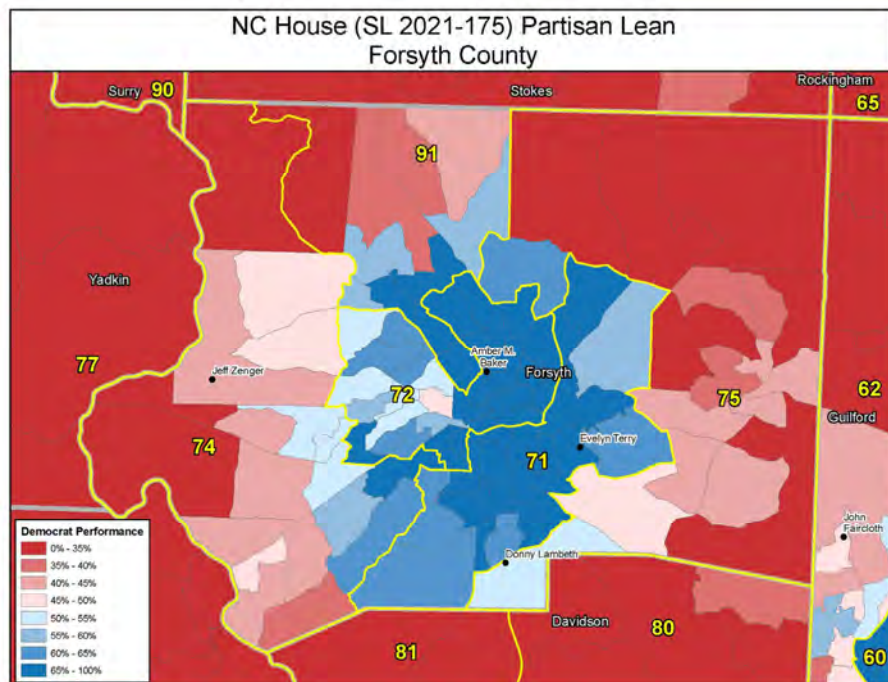


[REST OF PAGE INTENTIONALLY LEFT BLANK]

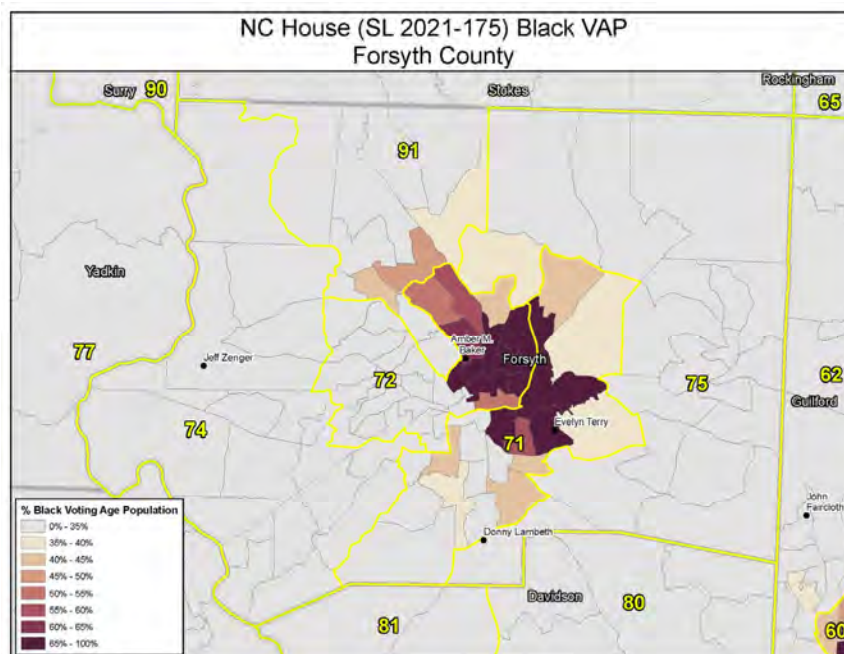
125. In a similar vein, the Legislature drew House districts within Mecklenburg County that cracked Black voters into a myriad of different districts, breaking apart communities of interest.



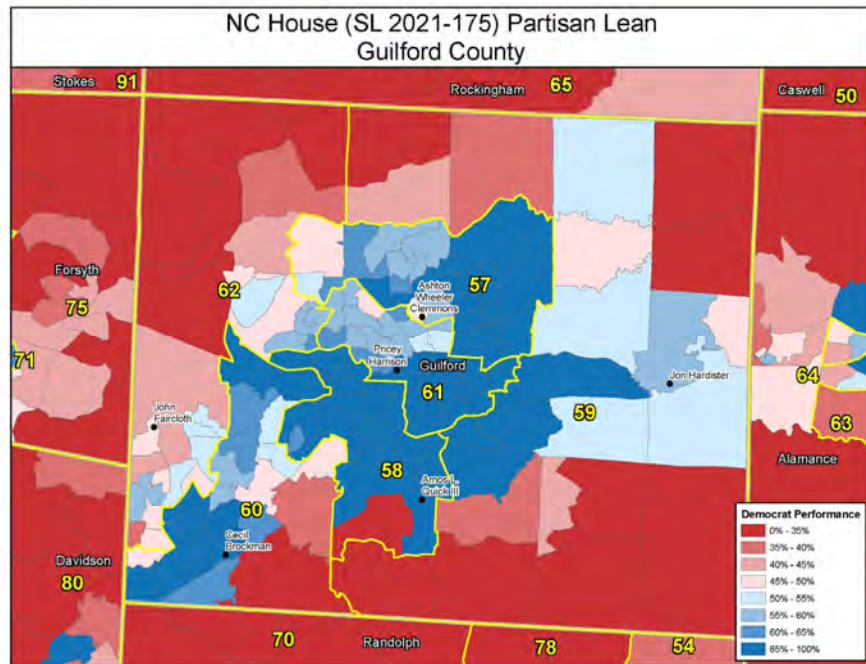
126. In Forsyth County, the Legislature drew maps that cracked Democratic voters into various House districts, some that break apart communities of interest, specifically House Districts 72 and 91. This cracking is only possible if political data was utilized in drawing these districts.



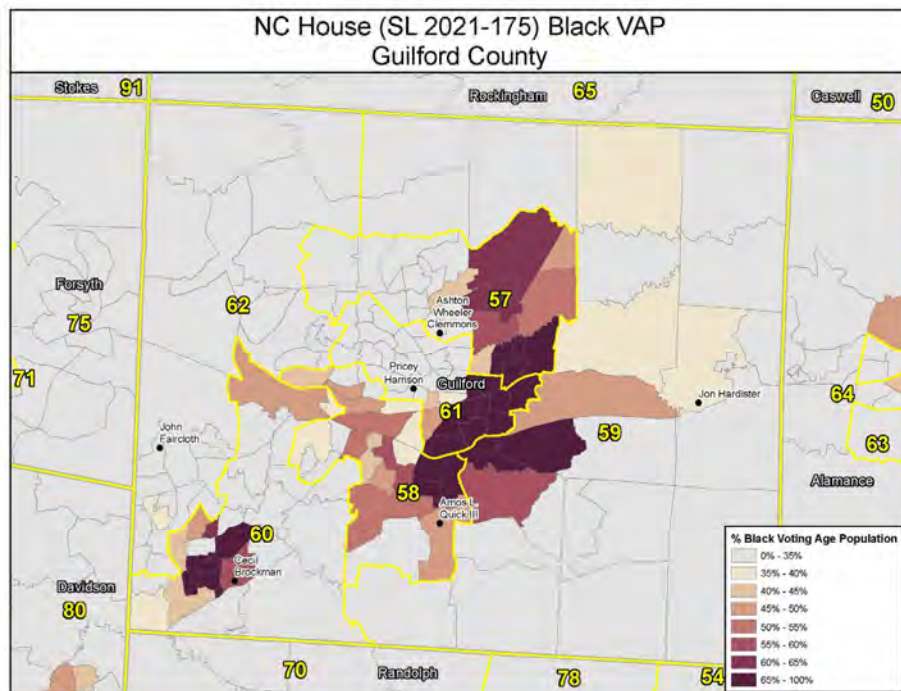
127. Similar to the partisan cracking described above, the Legislature also cracked Black voters in Forsyth County between Districts 71 and 72, drawing district lines in a manner that followed the contours of the Black electorate in northwest Forsyth.



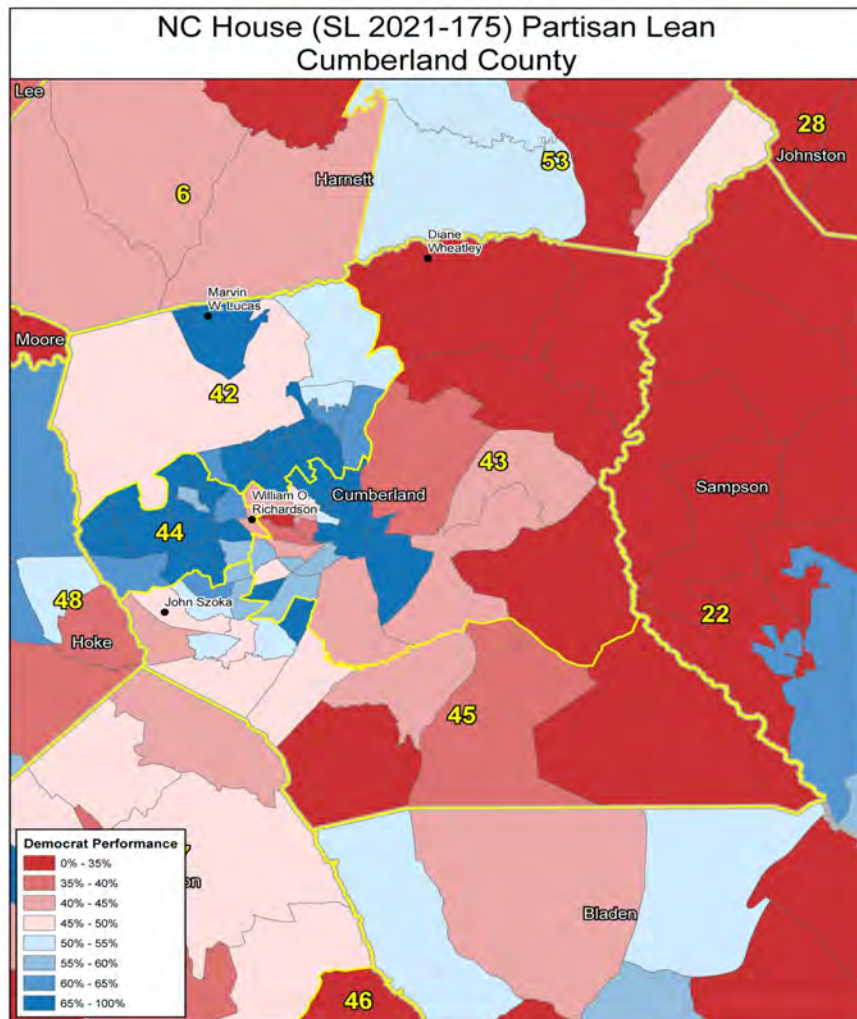
128. Similar to Forsyth County, the Legislature also cracked Guilford County Democratic voters, specifically in the western part of the county.



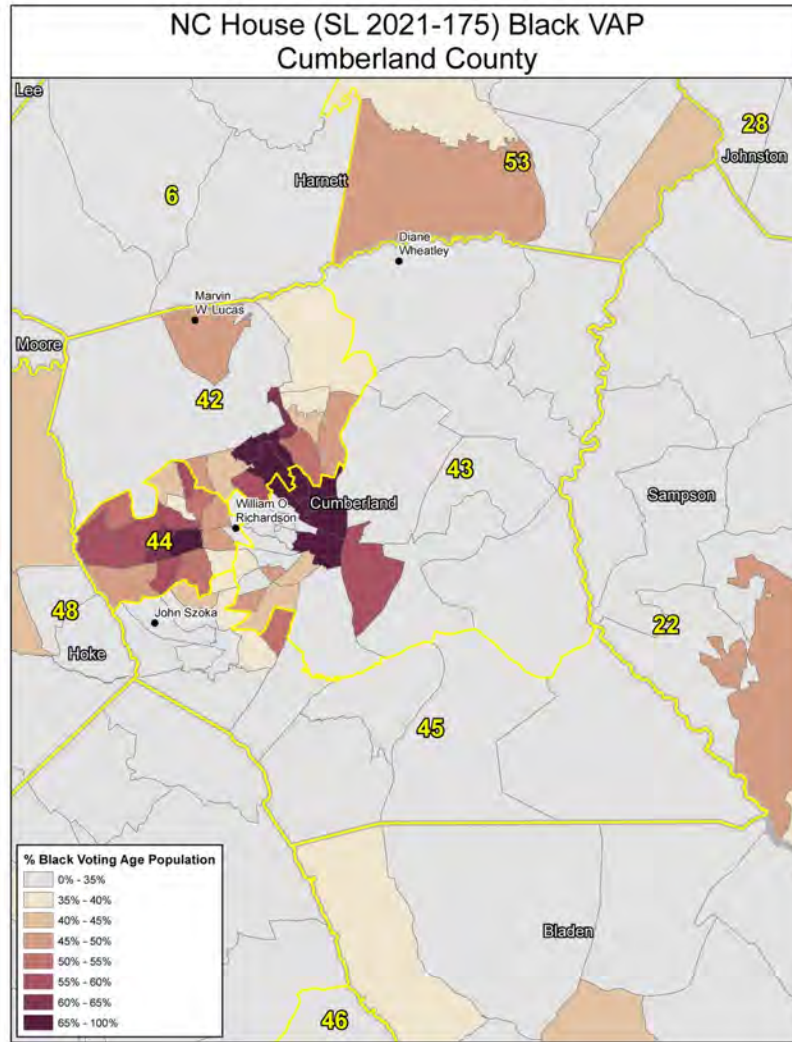
129. In a similar vein, the Legislature also cracked the Black electorate in Guilford County splitting communities of interest in the eastern part of the county.



130. In Cumberland County, the Legislature also cracked Democratic voters in a similar manner to Forsyth and Guilford Counties. Democratic voters on the eastern side of the county are split into four different districts in order to dilute the power of Democratic voters in the eastern part of the county overall.



131. The Legislature also cracked the Black electorate between House Districts 42 and 43, but packed Black voters into District 44. The only way that these lines could be drawn was by looking at racial data.



E. The Challenged Maps Will Have a Durable and Extreme Discriminatory Effect.

132. The enacted maps produce political outcomes that are extreme statistical outliers and political outcomes of the elections are unlikely to change even in swing election years – that is, they are very effective partisan gerrymanders.

133. The Congressional Map is likely to elect 10 Republicans and 4 Democrats, although Congressional District 2 has now been rated a Toss Up district, so it is entirely possible that the map will elect 11 Republicans and 3 Democrats. This is a 71.4%-78.6% Republican control of the Congressional delegation in a state where most statewide elections are very close to 50-50.

134. Likewise, in the Senate, the districts are drawn to ensure that Republicans cannot lose a majority in the Senate, and should they pick up just a few seats (in the small number of competitive seats to begin with), they could likely restore their supermajority. That is, again, in a 50-50 state, Republicans would be poised to control at least three-fifths or more of the Senate.

135. Similarly, in the State House, the district lines are drawn so that it is essentially impossible for Democrats to obtain a majority in that chamber, despite the fact that North Carolina is an evenly divided state. The number of Republicans elected to the State House would, through the entire decade of use of this map, be expected to greatly exceed and outperform their statewide vote share.

F. No Other Neutral Reason Explains the Extreme Partisan Discrimination.

136. No purported reason that might be offered to explain the extreme partisan gerrymander is plausible or factual.

137. To the extent that Democratic voters are concentrated in urban areas, that did not require Legislative Defendants to crack Democratic and Black voters in Guilford County or to crack Democratic voters in Wake County congressional districts, as an example.

138. The Whole County Provision likewise does not require or produce the extreme partisan outcomes observed in the three challenged maps. Repeatedly, when Legislative Defendants chose between county clusters that they said were legal, they consistently chose the clusters that would perform better for Republicans and worse for Democrats (and often the clusters that would perform worse for Black voters). Moreover, within the clusters, the line-drawing was designed to maximize Republican advantage.

139. And even if, hypothetically, the leadership of the North Carolina General Assembly had not chosen to intentionally destroy a number of performing crossover districts in violation of Art. 1, Section 19 as they did, these maps would still be extreme partisan gerrymanders.

G. Legislative Defendants Timed their Redistricting Process to Evade Judicial Review and Stifle Public Input.

140. Plaintiff repeats and re-alleges the allegations contained in the preceding paragraphs.

141. On February 12, 2021, the U.S. Census Bureau announced that its release of P.L. 94-171 redistricting data would be delayed by the COVID-19 pandemic, and would not be released until the fall of 2021.³⁷ On February 24, 2021, the North Carolina State Board of Elections Executive Director Karen Brinson Bell advised the House Elections Law and Campaign Finance Reform Committee that this delay would require an election schedule change in light of the time required to prepare for candidate filing and ballot styles. Director Brinson Bell advised the Committee to move the 2022 primary to a May 3 primary, July 12 second primary, and November 8 general election.³⁸

142. The North Carolina General Assembly did not respond to Director Brinson Bell's recommendation to postpone the March 2022 primaries to May 3. The General Assembly did, however, extend the schedule for municipal elections for those municipalities similarly impacted by the Census delay. *See* S.B. 722, S.L. 2021-56 (2021).

143. The Legislative Defendants thereafter unnecessarily and intentionally narrowed the window for public engagement in redistricting by waiting until the last moment to plan and begin the redistricting process. This delay caused avoidable confusion and obstructed the opportunity for meaningful public comment.

³⁷ Press Release, U.S. Census Bureau, Census Bureau Statement on Redistricting Data Timeline (Feb. 12, 2021), <https://www.census.gov/newsroom/press-releases/2021/statement-redistricting-data-timeline.html>.

³⁸ North Carolina State Board of Elections, *A Look Back at North Carolina's Historic 2020 Election & Looking Ahead at 2021, Presentation to House Election Law & Campaign Finance Reform Committee* at p. 14, Feb. 24, 2021, 2021–2022 Session (N.C. 2021), <https://www.ncleg.gov/documentsites/committees/House2021-21/02-24-21/House%20Elections%20Committee%20Presentation%202-24-2021%20FINALv2.pdf>.

144. Despite having received notice in February 2021 from the U.S. Census Bureau about the delays in releasing Census data, and the resulting impact on election schedules, the Redistricting Chairs failed to convene any meetings of the Redistricting Committees to plan for the 2021 redistricting until the eve of Census data’s release in August of 2021. The Redistricting Chairs and Redistricting Committees failed to propose any schedule for the redistricting process or notice of public comment related to the redistricting process, and failed to publicly propose or consider redistricting criteria, until the first meeting on August 5, 2021. Any and all of these steps could have been taken at any point after the Long Session was convened in January 2021.

145. When the Redistricting Committees finally met on August 5, 2021, the Redistricting Chairs initiated an unnecessarily rushed and disorganized redistricting process that has stifled public comment and lent uncertainty to what could have been an organized and predictable process. For example:

- a. The Redistricting Chairs released proposed redistricting criteria on August 9, 2021, and provided the public less than 24-hours-notice to attend an 8:30am, in-person only hearing on a weekday (August 10, 2021) for public comment on the proposed redistricting criteria.³⁹ The Redistricting Committees then voted to accept that criteria barely three days (August 12) after it was first proposed.
- b. The Redistricting Chairs waited until September 1 to announce a schedule for public hearings, held from September 8 through September 30, 2021.

³⁹ *Joint Meeting of the Senate Redistricting and Elections Committee and the House Redistricting Committee for Discussion of Schedule for Public Hearings*, Aug. 18, 2021, 2021–2022 Session (N.C. 2021), <https://www.ncleg.gov/documentsites/committees/Senate2021-154/2021/08-18-2021/Senate%20Committee%20on%20Redistricting%20and%20Elections%20Agenda%20for%208-18-21%209:00%20AM.pdf>.

These hearings were ineffectively noticed, including errors in location that caused confusion and obstructed public comment. For example, the Redistricting Chairs provided the wrong location information in the notice for the September 8, 2021 hearing in Caldwell County, telling the public it was to be held at Caldwell County Community College when it was actually being held miles away at the JE Broyhill Civic Center. There was low turnout at this hearing, and several individuals who had signed up to speak at this hearing did not appear when called.

- c. As compared to prior redistricting cycles, the Redistricting Committees provided materially less opportunities for public comment and involvement by holding only 13 public hearings as compared to over 60 hearings held in the 2011 cycle.
- d. The Redistricting Chairs announced the aforementioned required county groupings from the Duke Academic Paper on October 5, 2021, without any prior discussion or opportunity for public input.
- e. The Redistricting Chairs failed to provide the public or Legislatures with any schedule for drawing maps, or even a deadline by which maps would need to be proposed, lending uncertainty and unnecessary delay in the map-drawing process. As of noon on October 29, 2021, Legislators were still drawing proposed maps and no deadline or schedule for the submission or vote on proposed maps had been announced by the Redistricting Chairs. Upon information and belief, Defendant Hise was revising a proposed

Senate map on October 28 in a meeting for which there was no prior public notice.

- f. The Redistricting Chairs provided less than three business days’ notice of two public hearings on proposed maps on October 25 and 26, 2021, failing to make all the maps that would be considered available for public view when available. For example, Senate map “SST-4” was, upon information and belief, drafted by October 14, but was not publicly available until October 19 and was published without any public announcement. House map “HBK-1” was not public until the afternoon of Friday, October 22, with no public announcement. Overall, Legislative Defendants provided the public with just three days to review and analyze a total of ten maps.
- g. The House Redistricting Committee continued to schedule map drawing sessions up until November 3, 2021, even though on October 28, notice was provided – and later rescinded by – the House Committee on Rules, Calendar, and Operations for House Bill 976 (“HB976”) titled House Redistricting Plan 2021 without a corresponding map. Later that day, the House Redistricting committee gave notice that HB976 would be heard on November 1 still with no corresponding map. In the afternoon of October 29, the Senate Committee on Redistricting and Elections provided notice to hear three proposed redistricting bills: Senate Bill 737 (“SB737”) titled Congressional Redistricting Plan 2021-CCH-6, Senate Bill 738 (“SB737”) titled Congressional Redistricting Plan 2021-CST-8, and Senate Bill 740 (“SB740”) titled Congressional Redistricting Plan 2021/CST-13, for

November 1 at 9:00am. On October 29, the Senate Committee on Redistricting and Elections sent notice to hear Senate Bill (“SB739”) titled Senate Redistricting 2021-SST-13 for November 2.

- h. On November 1, the Redistricting Chairs asked committee members to vote no on SB738 and SB740, the two Congressional maps drawn by Democrat members, the two Congressional maps drawn by Democrat members.
- i. The Redistricting Chairs continued the pattern of providing the public or Legislatures with confusing and inadequate notice on November 1 when the House Redistricting committee postponed hearing HB976 three times in less than three hours.

146. By designing a process that stifled public comment and caused uncertainty and unnecessary chaos to the redistricting process, the delay caused by Legislative Defendants will have severe consequences for voters’ ability to elect candidates of their choice.

147. Pursuant to Sections 6 and 7 of Article II of the North Carolina Constitution, candidates for North Carolina House and Senate must have resided in the district for one year immediately prior to the General Election. The General Election occurs on November 8, 2022, and thus candidates must reside in their district starting on November 8, 2021. Due to Legislative Defendants’ unjustified delay in convening the Redistricting Committees until August, the implementation of a confusing and uncertain public comment process, and the late adoption of final redistricting maps, potential candidates had insufficient time to change their residency if required by changes in the final maps. The inability of potential candidates to meet residency requirements due to late-adopted maps will impede the ability for voters of color, including the voters served by Plaintiff Common Cause, to elect candidates of their choice.

148. Upon information and belief, Legislative Defendants acted to ensure that members of their political party would not be mal-impacted by the one-year residency requirement, and gave forewarning to Legislators of their political party who they anticipated would be impacted by district lines long before the Redistricting Committees were convened in August 2021. Upon information and belief, Senator McInnis moved residencies in mid-2021, before the Redistricting Committees were convened, in order to avoid double bunking when a new Senate map would be enacted.⁴⁰

149. Legislative Defendants also deliberately misrepresented public testimony offered during the public hearings held in September 2021, before draft maps had been released, in an attempt to justify their maps when they were voted on in November. Member of the public that provided comment consistently asked for an end to gerrymandering, and further requested that lawmakers adhere to state and federal law, including those such as the VRA meant to protect voters of color. However, Legislative Defendants cherry picked and misrepresented testimony, and specifically testimony of Black residents, in order to justify their unlawful districts. For example, in a November 1, 2021 Senate Redistricting Committee meeting, Defendant Daniel asserted that public input from Moore County resident Maurice Holland Jr. informed the formation of a “Sandhills” district in the Congressional map. However, Mr. Holland spoke specifically in favor of proposed Congressional map CBK-4 which grouped Moore, Hoke, Cumberland, Scotland, Robeson, and parts of Harnett and Richmond counties together,⁴¹ while SB740 trisects this county

⁴⁰ See Dallas Woodhouse, “Veteran GOP State Senators Headed for High Profile Primary,” CAROLINA JOURNAL (Nov. 11, 2021) (“McInnis finalized his move late this summer when it became clear that he would be double bunked with another GOP senator from a considerably larger county.”), <https://www.carolinajournal.com/news-article/veteran-gop-state-senators-headed-for-high-profile-primary/>.

⁴¹ See *2021-10-25 Redistricting Public Hearing – Wake, Caldwell, New Hanover* at 2:17:02, YOUTUBE (Nov. 1, 2021) <https://www.youtube.com/watch?v=njisLoqWuT0>.

grouping through the middle between Congressional Districts 3, 4 and 8.⁴² Mr. Holland also spoke against proposed Senate Map SST-4,⁴³ calling districts 21 and 22 in Moore and Cumberland county “extreme,” and against proposed House Map HBK-11 (dividing Moore County into 3 districts).⁴⁴ But the Enacted maps drawn and proposed by Legislative Defendants directly contradict Mr. Holland’s expressed wishes; the Senate Map largely retains the “extreme” districts in SD 21 and SD19, and the House map still trisects Moore County between HD 51, HD 78, and HD 52. This misrepresentation of public testimony gives rise to an inference of bad faith.

150. Overall, the actions of Legislative Defendants, or lack thereof, have caused significant uncertainty for potential candidates running for legislative office to the detriment of the candidates of choice for voters of color, and while acting to insulate members of their own party. Upon information and belief, Legislative Defendants’ unnecessarily delay and chaotic process will prevent voters of color from electing candidates of their choice due to the burden and uncertainty currently facing new candidates. Upon information and belief, Legislative Defendants’ delay will also restrain Plaintiff from educating their members and voters on who is running for legislative office in a timely manner.

CLAIM I

DECLARATORY JUDGMENT ACT

151. Plaintiff repeats and re-alleges the allegations contained in the preceding paragraphs.

⁴² See https://www.ncleg.gov/Files/GIS/Plans_Main/Congress_2021/SL%202021-174%20Congress%20-%2011%20x%2017%20Map.pdf.

⁴³ Available at https://www.ncleg.gov/documentsites/committees/Senate2021-154/2021/Member%20Submitted%20Maps/SST-4/SST-4_11x17.pdf

⁴⁴ *Id.*

152. The North Carolina Declaratory Judgment statutes, N.C.G.S. Chapter 1, Article 26, expressly allows for the determination of legal rights, and must be liberally construed and administered to afford “relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” N.C.G.S. §§ 1-254, 1-264. Where a declaratory judgment claim is premised on “issues of great public interest,” the court should “adopt and apply the broadened parameters of a declaratory judgment action.” *Hoke Cty Bd. of Educ. v. State*, 358 N.C. 605, 615-16 (2004).

153. Article I, Section 3 of the North Carolina Constitution provides that the rights of the people of North Carolina “shall be exercised in pursuance of law and consistently with the Constitution of the United States.” Article I, Section 5 of the North Carolina Constitution prohibits a law or ordinance in North Carolina from contravening the federal Constitution. Together, these provisions “delineate[] the interplay between federal and state law.” *Stephenson I*, 355 N.C. at 370. As applied to redistricting, “the State retains significant discretion when formulating legislative districts so long as the ‘effect’ of districts created pursuant to the ‘whole county’ criterion or other constitutional requirement does not dilute minority voting strength in violation of federal law.” *Id.*

154. Legislative Defendants have adopted redistricting criteria that prohibit the use of racial data, and have repeatedly asserted – incorrectly – that applicable law does not require the consideration of racial data to ensure compliance with the North Carolina Constitution or other applicable law.

155. Legislative Defendants have further mandated the use of designated county clusters for state Senate and House maps that destroyed effective crossover districts, in violation of Article I, Section 19, without ensuring compliance with North Carolina Constitutional requirements and following the unequivocal instructions for the redistricting process articulated in *Stephenson v. Bartlett*. Legislative Defendants have asserted themselves, and through counsel, that state law does

not require them to undertake the first step in *Stephenson* by making the analysis of racial data necessary to ascertain what districts are required by the VRA (including prohibiting intentional racial discrimination, also required by Article I, Section 19) before drawing all others.

156. The intentional action, and inaction, by Legislative Defendants has created insecurity and uncertainty as to the rights of the members and voters served by Plaintiff Common Cause that will result in, and which indicate an intent to cause, violations of their fundamental right to fair representation and freedom from intentional discrimination.

157. Accordingly, Plaintiff seeks a declaratory ruling that Plaintiff and its members and the voters it serves are entitled to, and Legislative Defendants have a duty to undertake, a redistricting process that adheres the requirements of Article II, Sections 3 and 5 of the North Carolina Constitution as set forth in *Stephenson v. Bartlett*, including a requirement to undertake the analysis of racial data necessary to ascertain what districts are required by the VRA.

158. The Declaratory Judgment Act provides for further relief “whenever necessary or proper.” N.C.G.S. § 1-259.

159. Moreover, Plaintiff seeks injunctive relief requiring the North Carolina General Assembly to adhere to the requirements of Article II, Sections 3 and 5, as set forth in *Stephenson v. Bartlett*, and specifically to perform a meaningful attempt to determine whether there are any districts compelled by the VRA, which, at a minimum, requires the consideration of racial data to understand changing demographics and performing a racially polarized voting analysis where the racial demographics indicate potential VRA problems before designating county clusters required in Senate and House legislative maps.

160. Plaintiff further seeks injunctive relief enjoining SBE Defendants from administering any election utilizing the districts set forth in SB739 and HB976 and/or enjoining

the SBE Defendants from administering the Statewide Primary elections until Legislative Defendants or the General Assembly have fulfilled their duty under *Stephenson*.

CLAIM II

INTENTIONAL RACIAL DISCRIMINATION IN VIOLATION OF ARTICLE I, SECTION 19 OF THE NORTH CAROLINA CONSTITUTION

161. Plaintiff relies herein upon all of the paragraphs of this Complaint.

162. The Equal Protection Clause, Article I, Section 19 of the North Carolina Constitution, states that “[n]o person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.” This provision prevents a state and its officials from discriminatorily or arbitrarily treating qualified voters differently on account of their race or skin color.

163. North Carolina’s Equal Protection Clause affords broader protections to its citizens in the voting rights context than the U.S. Constitution’s equal protection provisions. *See Stephenson v. I*, 355 N.C. at 376–80, 381 n.6; *Blankenship v. Bartlett*, 363 N.C. 518, 523 (2009).

164. The Supreme Court of North Carolina has held that “[i]t is well settled in [North Carolina] that the right to vote on equal terms is a fundamental right.” *Stephenson I*, 355 N.C. at 378 (internal quotation marks omitted).

165. To that end, North Carolina’s Equal Protection Clause protects the right to “substantially equal voting power.” *Id.* at 379.

166. Legislative Defendants’ intentional discrimination against Plaintiff’s members of color and the voters of color that Plaintiff serves in devising state Legislative maps is plain: Legislative Defendants’ deliberately and intentionally orchestrated a redistricting process that unlawfully and blatantly disregarded express direction from the North Carolina Supreme Court in

Stephenson v. Bartlett, with the intent and effect of preventing lawmakers from protecting voters of color from harm in the redistricting process.

167. Any reasonable legislature, including the Legislative Defendants, could have surmised that prohibiting any formal use of racial data in the drawing or consideration of maps and that failing to undertake the analysis of racial data set forth under *Stephenson* would lead to – and have the clear and unavoidable effect of – the intentional destruction of functioning crossover districts for voters of color and reduce their ability to elect candidates of their choice, thus disproportionately limiting their ability to elect candidates of choice as compared to White voters. *See McCrory*, 831 F.3d at 227-28 (“[T]he removal of public assistance IDs in particular was suspect, because a reasonable legislator would be aware of the socioeconomic disparities endured by African Americans and could have surmised that African Americans would be more likely to possess this form of ID” (internal quotations and citations omitted)). Upon information and belief, Legislative Defendants intentionally orchestrated an unlawful redistricting process that prohibited any other member from formally considering or using the data needed to prevent the destruction of effective districts for voters of color or the drawing of district lines that would disproportionately reduce the ability of voters of color to elect their candidates of choice.

168. Furthermore, by enacting and implementing SB740, SB739, and HB976, Defendants have purposefully discriminated against Black voters as alleged in the above paragraphs. A motivating purpose behind SB740, SB739, and HB976 was to undermine the voting power of Black voters and reduce Black representation in the Legislature. At the time these laws were enacted, the General Assembly had before it evidence that Black voters would be harmed by these laws due to packing and cracking in certain areas within these maps. The Legislature enacted SB740, SB739, and HB976 with minimal public debate and on an extremely and unnecessarily

compressed legislative schedule, with the bills passing both houses of the Legislature only days after their submission.

169. Racially polarized voting exists in North Carolina, both historically and today, such that the race of voters correlates with the selection of certain candidate or candidates. *McCrory*, 831 F.3d at 225-26 (noting African American voters overwhelmingly support Democratic candidates). Any reasonable legislator, including Legislative Defendants, would understand this correlation. Upon information and believe, Legislative Defendants sought to target and discriminate against voters of color in order to receive the “political payoff” that would result from the racially polarized voting. *McCrory*, 831 F.3d at 222.

170. Both the discriminatory effect of these statutes and their legislative history are relevant factors in analyzing them for discriminatory intent. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977).

171. A motivating purpose behind Legislative Defendants’ intent to orchestrate their unlawful redistricting process, and in the Legislature’s drawing and enactment of SB740, SB739, and HB976, was to draw districts that will not provide Black voters, including the members and voters served by Plaintiff Common Cause, an equal opportunity to elect their preferred candidates, will dilute the voting power of Black voters, and will make it more difficult for these voters to elect their candidates of choice across the state.

172. Legislative Defendants’ unlawful redistricting process and the enacted maps SB740, SB730, and HB976 will undermine and/or prevent the ability of Black voters, including the members and voters served by Plaintiff Common Cause, to elect their candidates of choice as they are able to under current benchmark state Legislative districts, as specified in the above paragraphs.

173. Legislative Defendants’ designated county clusters for state Legislative maps, and the enacted maps in SB740, SB739, and HB976 intentionally and impermissibly discriminate against the members and voters of color served by Plaintiff, and Defendants advance no legitimate or compelling government interest to justify this discrimination.

CLAIM III

PARTISAN GERRYMANDERING VIOLATION OF FREE ELECTIONS CLAUSE OF THE NORTH CAROLINA CONSTITUTION

174. Plaintiff relies herein upon all of the paragraphs of this Complaint.

175. The Free Elections Clause in Article I, Section 10 of the North Carolina Constitution provides that “All elections shall be free.”

176. The will of the people plays a fundamental role in North Carolina’s democratic government. *See People ex re. Van Bokkelen v. Canaday*, 73 N.C. 198, 220 (1875) (“Our government is founded on the will of the people. Their will is expressed by the ballot.”). North Carolina’s “is a government of the people, in which the will of the people – the majority – legally expressed, must govern.” *State ex rel. Quinn v. Lattimore*, 120 N.C. 426, 428 (1897) (citing N.C. Const. art. I, § 2). Furthermore, there is a “compelling interest” of the state “in having fair, honest elections.” *State v. Petersilie*, 334 N.C. 169, 184 (1993).

177. Accordingly, the Free Elections Clause requires that elections be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. This is a fundamental right of the citizens enshrined in the North Carolina Declaration of Rights, a compelling governmental interest, and a cornerstone of North Carolina’s democratic form of government. *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56, at *337-38.

178. Partisan gerrymandering is the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power. *Ariz. State Legislature v. Indep.*

Redistricting Comm’n, 135 S. Ct. 2652, 2658 (2015). It operates through vote dilution, i.e., the devaluation of one citizen’s vote as compared to others, because they are likely to vote for the other party.

179. Partisan gerrymandering claims are justiciable under the North Carolina Constitution because such claims fall within the broad, default category of constitutional cases the North Carolina courts are empowered and obliged to decide on the merits, and not within the narrow category of exceptional cases covered by the political question doctrine. Furthermore, partisan gerrymandering does not involve a textually demonstrable constitutional commitment of the issue to a coordinate political department. *Bacon v. Lee*, 353 N.C. 696, 717 (2001). Furthermore, there are satisfactory and manageable criteria and standards for adjudicating partisan gerrymandering claims under the North Carolina Constitution. *Hoke Cty Bd. of Educ. v. State*, 358 N.C. 605, 639 (2004).

180. Extreme partisan gerrymandering that entrenches politicians in power is contrary to the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. “Elections are not free when partisan actors have tainted future elections by specifically and systematically designing the contours of the election districts for partisan purposes and a desire to preserve power.” *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56, at *344 (N.C. Super. Ct. Sept. 3, 2019).

181. SB740, SB739, and HB976 were designed, specifically and systematically, to maintain at least Republican majorities in the state House and Senate and to provide at least a majority of Congressional seats to Republicans. This was achieved by drawing maps in which it was nearly impossible for Democrats to win majorities in either state Legislative chamber or a majority of Congressional seats in any reasonably foreseeable electoral environment.

182. In drawing and enacting SB740, SB739, and HB976, Defendants ensured that it is nearly impossible for the will of the people to be expressed through their votes for State legislators and sought instead to predetermine election outcomes in specific districts and county groupings, as set forth above. Defendants, with the intent to control and predetermine the outcome of state Legislative and Congressional elections for the purpose of retaining partisan power in the General Assembly and to send a majority of Republicans to Congress in North Carolina’s Congressional Delegation, manipulated district boundaries resulting in extreme gerrymandering, subordinating traditional redistricting criteria, so that the resulting maps cracked and packed voters to achieve these partisan objectives.

183. Defendants’ actions do not serve any legitimate government interest, and are not narrowly tailored to achieve a compelling government interest.

184. Accordingly, in drawing and enacting SB740, SB739, and HB976, individually and collectively, Defendants have violated the Free Elections Clause by depriving North Carolina citizens the right to the vote for General Assembly members and Congresspersons in elections that are conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.

185. Defendants’ actions have also harmed Plaintiff, its members and the voters it serves and other voters in North Carolina, by subverting their right, as guaranteed by the Free Elections Clause and provided for in Article I, § 9 of the North Carolina Constitution, to seek a “redress of grievances and for amending and strengthening the law,” as Democratic voters in North Carolina cannot meaningfully seek to redress their grievances or amend the laws consistent with their policy preferences when they cannot obtain a majority of the General Assembly.

CLAIM IV

PARTISAN GERRYMANDERING IN VIOLATION OF ARTICLE I, SECTION 19 OF THE NORTH CAROLINA CONSTITUTION

186. Plaintiff relies herein upon all of the paragraphs of this Complaint.

187. The Equal Protection Clause of the North Carolina Constitution guarantees to all North Carolinians that “[n]o person shall be denied the equal protection of the laws.” N.C. Const., art. I, § 19.

188. The Equal Protection Clause protects the right to “substantially equal voting power.” *Stephenson I*, 355 N.C. at 379. The right to vote on equal terms is a “fundamental right.” *Id.* at 379.

189. Partisan gerrymandering violates the State’s obligation to provide all persons with equal protection of law because, by seeking to diminish the electoral power of supporters of a disfavored party, a partisan gerrymander treats individuals who support candidates of one political party less favorably than individuals who support candidates of another party. *Common Cause v. Lewis*, 2019 N.C. Super. LEXIS 56, at *346; *cf. Lehr v. Robertson*, 463 U.S. 248, 265 (1983) (“The concept of equal justice under law requires the State to govern impartially.”).

190. In drawing and enacting SB740, SB739, and HB976, Defendants intended to deprive citizens of the right to vote on equal terms based on partisan classification in an invidious manner and/or in a way unrelated to any legitimate legislative objective. Defendants intended to hamper, rather than to achieve, fair and effective representation for all citizens in drawing and enacting SB740, SB739, and HB976. Defendants subordinated Democratic voters by devaluing their vote as compared to the votes of Republican voters with at least the partial purpose, and in the alternative the predominant purpose, of entrenching the Republican Party by drawing district lines in individual districts and statewide.

191. Defendants’ actions have the effect of silencing the political voice of voters who support Democratic candidates, including members and voters served by Plaintiff Common Cause, by virtue of district lines that crack or pack those voters, as set forth in the paragraphs above, thereby depriving them of substantially equal voting power in an effort to entrench the Republican party in power, in violation of Article I, Section 19 of the North Carolina Constitution.

192. As a result, voters who prefer Democratic candidates, including the members and voters served by Plaintiff Common Cause, are significantly hindered from meaningfully participating in the decision-making process of government because SB740, SB739, and HB976 were drawn to systematically prevent Democrats from obtaining a majority in either chamber of the General Assembly or sending a majority of Democrats to Congress as part of North Carolina Congressional Delegation.

193. SB740, SB739, and HB976 also deprive Democratic voters in their districts, as alleged above, such that their votes, when compared to the votes of Republican voters, are substantially less likely to ultimately matter in deciding election results. Defendants’ partisan gerrymandering further harms voters, including the Common Cause members and voters who support Democratic candidates, by insulating legislators from popular will and rendering them unresponsive to portions of their constituencies.

194. Defendants’ actions in partisan gerrymandering are not justified by any legitimate state interest or other neutral factor, nor are they narrowly tailored to advance a compelling government interest. Rather, Defendants acted with intent, unrelated to any legitimate legislative objective, to classify voters and deprive citizens of the right to vote on equal terms by subordinating Democratic voters to Defendants’ partisan goals, and this intent was the predominant purpose of drawing the district lines in individual districts and statewide, set forth

above. Defendants’ actions have the effect of depriving disfavored voters in North Carolina of substantially equal voting power and the right to vote on equal terms, as well as substantially equal legislative representation.

CLAIM V

PARTISAN GERRYMANDERING IN VIOLATION OF ARTICLE I, SECTIONS 12, 14 OF THE NORTH CAROLINA CONSTITUTION

195. Plaintiff relies herein upon all of the paragraphs of this Complaint.

196. The Freedom of Speech Clause in Article I, Section 14 of the North Carolina Constitution provides that “[f]reedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained.” The Freedom of Assembly Clause in Article I, Section 12 provides, in relevant part, that “[t]he people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.” In North Carolina, the right of assembly encompasses the right of association. *Feltman v. City of Wilson*, 238 N.C. App. 246, 253 (2014).

197. Voting for the candidate of one's choice and associating with the political party of one's choice are core means of political expression protected by the North Carolina Constitution's Freedom of Speech and Freedom of Assembly Clauses. Voting provides citizens a direct means of expressing support for a candidate and his views. *See Common Cause v. Lewis*, 2019 N.C. Super. LEXIS 56, at *365; *Buckley v. Valeo*, 42 U.S. 1 (1976).

198. The Freedom of Assembly Clause independently protects Common Cause members and voters who support Democratic candidates, and their association with the Democratic Party.

199. By partisan gerrymandering, Defendants identified Republican voters as preferred speakers and targeted Democratic voters, including members and voters served by Plaintiff

Common Cause, as disfavored speakers for disfavored treatment because of disagreement with the views they express when they vote. In doing so, they have rendered disfavored speech less effective, and have intentionally engaged in viewpoint discrimination against Democratic voters, including members and voters served by Plaintiff Common Cause.

200. SB740, SB739, and HB976 also burden the ability of Plaintiff’s members and the voters it serves who are Democratic voters to associate effectively, as guaranteed under Article I, § 12, by precluding them from instructing their representatives, and reducing their ability to apply to the General Assembly for redress of grievances. As a result of the partisan gerrymanders, Democratic voters across the states will be unlikely to obtain redress from the General Assembly on important policy issues because they will unlikely be able to obtain Democratic majorities in the General Assembly. Plaintiff Common Cause likewise cannot instruct representatives or obtain redress on the issues central to its mission due to the gerrymanders.

201. Defendants’ actions do not serve any legitimate government interest, and are not narrowly tailored to achieve a compelling government interest.

202. SB740, SB739, and HB976 also impermissibly retaliate against Plaintiff’s members and the voters it serves who are Democratic voters by (1) taking adverse action against them by diluting their votes and the votes of the Common Cause members and voters who support Democratic candidates, and (2) being created by Defendants with an intent to retaliate against their protected speech or conduct based on their voting history. Furthermore, Defendants would not have taken this adverse action, specifically cracking and packing Democratic voters to dilute their votes, but for that retaliatory intent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

- a. Convene a court of three judges pursuant to N.C.G.S. § 1-267.1;

- b. Declare Plaintiff’s and its members and the voters it serves legal right to be free from redistricting that violates the North Carolina Constitution, as set forth in the paragraphs above;
- c. Declare Legislative Defendants’ duty to undertake a redistricting process that complies with the requirements of Article II, Sections 3 and 5 of the North Carolina Constitution, as described in *Stephenson v. Bartlett* and as set forth in the paragraphs above;
- d. Declare that the process orchestrated by Legislative Defendants in 2021, including the use of redistricting criteria that prohibited the formal use of racial data in the construction or consideration of state Legislative districts, requirement to utilize the Duke Senate Clusters and Duke House Clusters, and/or failure to ascertain and draw districts required by the VRA prior to all others violate Article II, Sections 3 and 5 of the North Carolina Constitution;
- e. Declare that the process orchestrated by Legislative Defendants in 2021, including the use of redistricting criteria that prohibited the formal use of racial data in the construction or consideration of state Legislative districts, requirement to utilize the Duke Senate Clusters and Duke House Clusters, and/or failure to ascertain and draw districts required by the VRA prior to all others violate Article I, Section 19 of the North Carolina Constitution;
- f. Declare that the harms to Black voters from the intentional destruction of effective crossover districts within SB739 and HB976 resulted from an unconstitutional redistricting process and violate the Equal Protection Clause of the North Carolina Constitution;

- g. Issue a permanent injunction enjoining Defendants from enforcing or giving any effect to the boundaries of districts that harm Black voters by intentionally destroying effective crossover districts within SB739 and HB976, including an injunction barring Defendants from conducting any further elections for the North Carolina General Assembly under these racially discriminatory districts.
- h. Issue a permanent injunction enjoining Defendants from enforcing or giving any effect to the boundaries of districts that reflect partisan gerrymanders in violation of the North Carolina Constitution in SB739, SB740, and HB976.
- i. Issue a permanent injunction enjoining Defendants from creating any future Legislative districts with the purpose or effect of burdening or penalizing an identifiable group, a political party, or individual voters based on their political beliefs, political party membership, registration, affiliations or political activities, or voting histories;
- j. Issue a permanent injunction enjoining Defendants from using “political data” in any future redistricting process to burden or penalize an identifiable group, a political party, or individual voters based on their political beliefs, political-party membership, registration, affiliations or political activities, or voting histories;
- k. Establish new state House, Senate, and federal Congressional districts that comply with the North Carolina Constitution if the North Carolina General Assembly fails to timely enact new plans comporting with the North Carolina Constitution;
- l. Issue any further injunctive relief necessary to delay the state Legislative and Congressional primary elections to allow for fulsome judicial review of the allegations herein and prevent irreparable harm to voters, as alleged herein;

- m. A prompt hearing and/or expedited pleading schedule;
- n. Award Plaintiff reasonable attorneys' fees, if just and proper;
- o. Make all further orders as are just, necessary, and proper; and
- p. Grant Plaintiff such other and further relief as the Court deems just and proper.

Respectfully submitted, this the 13th day of December, 2021.


Allison J. Riggs (State Bar No. 40028)

allison@southerncoalition.org

Hilary H. Klein (State Bar No. 53711)

hilaryhklein@scsj.org

Mitchell Brown (State Bar No. 56122)

Mitchellbrown@scsj.org

Katelin Kaiser (State Bar No. 56799)

Katelin@scsj.org

Jeffrey Loperfido (State Bar No. 52939)

jeffloperfido@scsj.org

SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
Telephone: 919-323-3909
Facsimile: 919-323-3942

J. Tom Boer* (D.C. Bar No. 469585;
CA Bar. No. 199563)

tom.boer@hoganlovells.com

Olivia T. Molodanof* (CA Bar No.
328554)

olivia.molodanof@hoganlovells.com

**Pro Hac Vice* motion filed
contemporaneously with this complaint

HOGAN LOVELLS US LLP
3 Embarcadero Center, Suite 1500
San Francisco, California 94111
Telephone: 415-374-2300
Facsimile: 415-374-2499

Counsel for Plaintiff Common Cause

VERIFICATION

I, Bob Phillips, serve as Executive Director of Common Cause North Carolina, and hereby state that my organization, Common Cause, is the Proposed Plaintiff Intervenor in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to Common Cause, except to those matters stated on information and belief, which I believe to be true.

B. Phillips

Bob Phillips

Sworn and subscribed before me this the 12 day of December, 2021.

Talia Ray
Notary Public

Name: Talia Ray

My commission expires: 11/6/2024



CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day submitted a copy of the foregoing COMPLAINT OF PLAINTIFF INTERVENOR COMMON CAUSE in the above titled action by mail and/or electronic mail, in the manner requested, to the following parties:

David J. Bradford
JENNER & BLOCK LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schuaf
Karthik P. Reddy
Urja Mittal
JENNER & BLOCK LLP
1099 New York Avenue, NW, Suite 900
Washington, D.C. 20001
shirsch@jenner.com
zschauf@jenner.com

Stephen D. Feldman
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27501
sfeldman@robinsonbradshaw.com

Adam K. Doerr
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
ROBINSON, BRADSHAW & HINSON, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for North Carolina League of
Conservation Voters, INC., et al. Plaintiffs*

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Marc E. Elias
Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
ELIAS LAW GROUP LLP
10 G. Street NE, Suite 600
Washington, D.C. 20002
MElias@elias.law
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

Abha Khanna
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
AKhanna@elias.law

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
ARNOLD AND PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue NW
Washington, DC 20001
elisabeth.theodore@arnoldporter.com
Counsel for Rebecca Harper, et al. Plaintiffs

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
NELSON MULLINS RILEY & SCARBOROUGH
LLP
4140 Parklake Avenue, Suite 200
Raleigh, North Carolina 27612
phillip.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
alyssa.riggins@nelsonmullins.com

Mark E. Braden
Katherine McKnight
Richard Raile
BAKER HOSTETLER LLP
1050 Connecticut Ave NW
Suite 1100
Washington, DC 20036
mBraden@bakerlaw.com
kmcknight@bakerlaw.com
rraile@bakerlaw.com

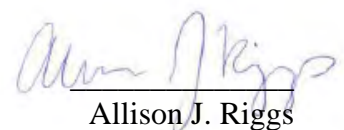
Counsel for Legislative Defendants

This the 15th day of December, 2021.

Terence Steed
Special Deputy Attorney General
Stephanie A. Brennan
Special Deputy Attorney General
Amar Majmundar
Senior Deputy Attorney General

NC DEPARTMENT OF JUSTICE
P.O. Box 629
Raleigh, NC 27602
tsteed@ncdoj.gov
sbrennan@ncdoj.gov
amajmundar@ncdoj.gov

Counsel for the State Defendants



Allison J. Riggs

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

REBECCA HARPER, et al.,

Plaintiffs,

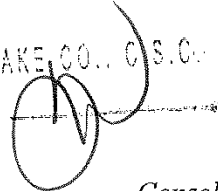
vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

IN THE GENERAL COURT OF JUSTICE
FILED SUPERIOR COURT DIVISION
21 CVS 015426

2021 DEC 16 P 3:51

WAKE CO. C.S.C.
BY 

Consolidated with
21 CVS 500085

**MOTION FOR PARTIAL RECONSIDERATION OF
DECEMBER 15 ORDER**

Legislative Defendants respectfully move the Court to reconsider the portion of its order of December 15, 2021, providing that the “NCLCV Plaintiffs are not required to produce any documents or information that Professor Moon Duchin did not consider or receive.” 12/15/21 Order 6, ¶ 2. The Court entered this portion of the order based on arguments Legislative Defendants did not have the opportunity to rebut, given the short time between the *NCLCV* Plaintiffs’ motion for a protective order and the Court’s order granting that motion. Legislative Defendants respectfully submit that the Court would benefit from a closer look at this issue with appropriate adversarial briefing.

The Court’s order, if left unamended, would shield most or all discovery concerning the *NCLCV* Plaintiffs’ supposedly “optimized” alternative plans for the North Carolina legislative and congressional districts (the “Optimized Plans”), which the *NCLCV* Plaintiffs claim they developed

using “high-performance computers” and “cutting-edge computational methods and resources.” The Optimized Plans are a central plank of the *NCLCV* Plaintiffs’ complaint, featured prominently in the *NCLCV* Plaintiffs’ preliminary-injunction motion, and are clearly within the scope of discovery. In fact, the *NCLCV* Plaintiffs have asked that the Optimized Plans be *imposed on North Carolina* at the remedial phase of this case. But, in opposing Legislative Defendants’ motion to compel and advancing their own motion for a protective order, the *NCLCV* Plaintiffs made the troubling and baseless argument that, because their expert Prof. Duchin did not personally create the Optimized Plans or access, review, and consider the source code and other materials germane to their creation, those materials are beyond the scope of discovery. The Court’s order provides that the *NCLCV* Plaintiffs need not produce any documents or information that Prof. Duchin did not “consider or receive.”

But even if Prof. Duchin did not create the plans or review the source code, *some* expert did. It is contrary to law for the *NCLCV* Plaintiffs to use Prof. Duchin as a conduit to present undisclosed expert work to the Court and as intermediary to conceal that work from scrutiny. If the *NCLCV* Plaintiffs intend to utilize the Optimized Plans in this case, it is incumbent upon them to disclose the expert; produce a report disclosing the basis of the expert’s opinions (e.g., the basis for the opinion that the plans are “optimized”); provide all supporting materials, including source code; and make that expert available for a deposition and cross examination. And, because the *NCLCV* Plaintiffs relied on this information in their preliminary-injunction papers—and because Prof. Duchin relied on the Optimized Maps for her own work—this information should be brought within the scope of the Court’s order commanding immediate production of expert materials relied

on at the preliminary injunction phase. To that extent, Legislative Defendants respectfully urge the Court to reconsider and amend its December 15 order.¹

1. The *NCLCV* Plaintiffs’ complaint alleges that

Plaintiffs have harnessed the power of high-performance computers, and employed cutting-edge computational methods and resources, to draw alternative maps that comply with state-law requirements and policies, advance traditional and neutral districting principles, and yield more competitive districts. Indeed, using these cutting-edge tools, Plaintiffs have created maps that approach being ‘Pareto optimal,’ which means that the maps are so strong on each redistricting criterion that improving the map on any one criterion necessarily worsens it on another. The Complaint refers to these maps as the ‘Optimized Maps.’

NCLCV Compl. ¶ 154.² Thus, according to the complaint, the Optimized Plans are the result of sophisticated “computational methods” and “resources” utilized by “high-performance computers” that achieve a “Pareto” optimal result. However, the *NCLCV* Plaintiffs have also hinted that one or more human persons were involved in drawing lines within the Optimized Plans. Their attorney represented to this Court at the preliminary-injunction hearing that “I’m not here to tell you that our maps were drawn without human intervention.” Dec. 3, 2021 Hr’g Tr. at 98:4–14. Yet both the “computational methods” and “human intervention” remain to this day a total mystery to everyone but the *NCLCV* Plaintiffs. Among other things, their basis for calling the plans “Pareto” optimal is unknown and remains unvetted.

2. Legislative Defendants are entitled to discovery “regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” 12/15/21 Order

¹ To be clear, this motion does not challenge most of the Court’s ruling, including its protective order. To the extent the Court grants relief pursuant to this motion, resulting disclosures may be made under the protective order, as appropriate.

² Although the *NCLCV* Plaintiffs were afforded until December 15 to file an amended complaint, they have not done so and instead elected to stand on their original complaint.

4 (quoting N.C. Ru. Civ. P. 26(b)(1)). Any expert materials a litigant offers must come supported with “[t]he facts or data considered by the [expert] witness.” *Id.* (quoting N.C. R. Civ. P. 26(b)(4)).

3. The law governing this issue is clear. An “expert must present an independent opinion obtained through his or her own analysis and not merely ‘surrogate testimony’ parroting otherwise inadmissible statements.” *State v. Ortiz-Zape*, 367 N.C. 1, 9, 743 S.E.2d 156, 162 (2013). “A scientist, however well credentialed he may be, is not permitted to be the mouthpiece of a scientist in a different specialty.” *Dura Auto. Sys. of Indiana, Inc. v. CTS Corp.*, 285 F.3d 609, 614 (7th Cir. 2002). If one expert relies on the work of another, then *both* experts must be disclosed, certified and accepted as experts, and subjected to expert discovery. *See id.* at 613–15 (excluding evidence where second expert, on whose work a disclosed expert relied, was not disclosed and accepted as an expert). As the Seventh Circuit explained:

If for example the expert witness (call him A) bases his opinion in part on a fact (call it X) that the party’s lawyer told him, the lawyer cannot in closing argument tell the jury, “See, we proved X through our expert witness, A.”

Matter of James Wilson Assocs., 965 F.2d 160, 173 (7th Cir. 1992). In that case, “[t]he issue was the state of [a] building,” and an architect was proffered to testify on that topic but had relied on the work of a consulting engineer; the Seventh Circuit rejected this “screen against cross-examination” and held that “the consulting engineer . . . was the one who should have testified.” *Id.* at 173; *see also* *TK-7 Corp. v. Est. of Barbouti*, 993 F.2d 722, 732 (10th Cir. 1993); *Dura Auto.*, 285 F.3d at 613–14; *State v. Craven*, 367 N.C. 51, 55, 744 S.E.2d 458, 460 (2013) (finding it impermissible for testifying expert to parrot results of lab report conducted by others); 29 Wright & Miller, *Federal Practice & Procedure Evid.* § 6274 (2d ed.) (“A court also may reject expert testimony under Rule 703 where the witness relies on the findings of an expert in a different field

and, because the witness is not an expert in that field, can only parrot and not critically evaluate those findings.”).

4. The *NCLCV* Plaintiffs are improperly attempting to shield a critical component of their case from discovery by clever expert disclosures and omissions. Plaintiffs tout the Optimized Plans created by “high-performance computers” and the “cutting-edge computational methods and resources,” *NCLCV* Compl. ¶ 154, but they failed to disclose (at least at the preliminary-injunction phase) the expert who ran that process or the methods used. The creators of the Optimized Plans were not “merely gofers or data gatherers but exercise[d] professional judgment.” *Dura Auto.*, 285 F.3d at 613. There are infinite ways to redistrict North Carolina, and expert discretion was necessarily required in crafting computer code to utilize or prioritize some criteria and not others. As their name indicates, the *Optimized* Plans were *optimized* according to a sophisticated computer code to achieve goals chosen by the expert or experts who performed the optimization. It is expert opinion that the Optimized Plans achieve a “Pareto” optimal standard, and the sophisticated process of creating the plans could only be reliable and admissible if someone with appropriate expertise performed the work. In turn, additional expert judgment was involved in any “human intervention” into the optimization and map-drawing processes. Understanding that process, and everything behind it, is essential to understanding the Optimized Plans.

5. The *NCLCV* Plaintiffs, however, are attempting to shield *all* of that critical information from discovery by disclosing a *different* expert, Prof. Duchin, who was not included in the creation process but merely analyzed the plans on the back end. But, just as the engineer must be disclosed and certified as an expert to the extent the engineer’s judgment calls are relevant to the architect’s opinion, the creator(s) of the Optimized Plans must be certified as experts, their opinions (e.g., their basis for calling the plans *optimized*) must be provided in a written report, their

underlying code and materials must be produced, and they must be made available for depositions and other appropriate discovery. The Optimized Plans are obviously not amenable to judicial notice or to admission as fact testimony. This is paradigmatic expert work that must be brought into the case—if at all—through an expert report.

6. The Court should apply these principles and require disclosure of the source code and other expert materials that produced the Optimized Plans. The December 15 order is not a final judgment and “is subject to revision at any time.” N.C. R. Civ. P. 54(b). Reconsideration is appropriate “to correct a clear error or prevent manifest injustice.” *Rossabi L. PLLC v. Greater Greensboro Ent. Grp., LLC*, No. 18 CVS 9568, 2021 WL 3073875, at *4 (N.C. Super. July 20, 2021) (citation omitted). Manifest injustice would result if Legislative Defendants were denied all inquiry into the Optimized Maps, which have been proposed as a point of comparison by which to strike down the enacted plans and as potential replacements. And the positions the *NCLCV* Plaintiffs tendered are clearly erroneous. Reconsideration is particularly appropriate where, as here, the aggrieved party was unable to advance the arguments supporting the reconsideration motion “at the time the relevant motion was pending.” *Morris Int’l, Inc. v. Packer*, No. 20 CVS 2156, 2021 WL 5115529, at *5 (N.C. Super. Nov. 2, 2021). The speed with which the Court (appropriately) sought to issue a ruling provides an adequate basis to open this limited portion of its ruling to reconsideration.

7. For these reasons, Legislative Defendants respectfully ask the Court to reconsider the portion of its December 15 order providing that the “*NCLCV* Plaintiffs are not required to produce any documents or information that Professor Moon Duchin did not consider or receive.” 12/15/21 Order 6, ¶ 2. The Court should order the *NCLCV* Plaintiffs to produce immediately all source code, source data, input parameters, and all outputted data pertaining to the Optimized Plans

and identify the persons involved in their creation. The Court should also make clear that expert disclosures required on December 23 must fully support the Optimized Plans, including the methods behind their creation, or else the Optimized Plans will be excluded from this case.

Respectfully submitted this the 16th day of December, 2021.

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com
Thomas A. Farr (NC Bar No. 10871)
tom.farr@nelsonmullins.com
Alyssa M. Riggins (NC Bar No. 52366)
alyssa.riggins@nelsonmullins.com
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 329-3800

BAKER HOSTETLER LLP
Mark E. Braden* (DC Bar No. 419915)
MBraden@bakerlaw.com
Katherine McKnight* (VA Bar No. 81482)
kmcknight@bakerlaw.com
1050 Connecticut Ave NW, Suite 1100 Washington DC
20036
* Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

It is hereby certified that on this the 16th day of December, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
*Counsel for the North Carolina State Board
of Elections; Damon Circosta, Stella
Anderson, Jeff Carmon III, Stacy Eggers IV,
and Tommy Tucker, in their official
capacities with the State Board of Elections*

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org

J. Tom Boer
Olivia T. Molodanof
Hogan Lovells US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com
Counsel for Intervenor Common Cause

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

2021 DEC 17 P 12:37

SUPERIOR COURT DIVISION

21 CVS 015426

NORTH CAROLINA LEAGUE OF WAKE CO. C.S.C.
CONSERVATION VOTERS, et al., BY

REBECCA HARPER, et al.,

Plaintiffs,

Consolidated with
21 CVS 500085

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

LEGISLATIVE DEFENDANTS' ANSWER TO VERIFIED COMPLAINT FILED BY
REBECCA HARPER, ET AL.

Defendants Representative Destin Hall, in his official capacity as Chair of the House Standing Committee on Redistricting; Senators Warren Daniel, Ralph E. Hise, Jr., and Paul Newton, in their official capacities as Co-Chairmen of the Senate Standing Committee on Redistricting and Elections; Representative Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives; and Senator Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate (collectively, "Legislative Defendants"), by and through counsel, and answer the Amended Complaint of Plaintiffs Rebecca Harper, et al. as follows:

INTRODUCTION

In their Verified Complaint (filed in 21 CVS 500085, which is now consolidated with 21 CVS 015426), Rebecca Harper and 25 other individual plaintiffs challenge the redistricting maps recently enacted by the North Carolina General Assembly—the maps for the U.S. Congress (the “Enacted Congressional Plan”), the North Carolina Senate (the “Enacted Senate Plan”), and the North Carolina House of Representatives (the “Enacted House Plan”) (collectively, the “Enacted Plans”), on various grounds under the North Carolina State Constitution. Legislative Defendants deny that the Enacted Plans suffer from any constitutional infirmities.

FIRST DEFENSE

Defendants will necessarily violate the Voting Rights Act and the Fourteenth and Fifteenth Amendments of the United States Constitution if the Court grants the relief requested by plaintiffs.

SECOND DEFENSE

Plaintiffs are asking this Court to “crack” Republican voters out of districts that currently elect Republican candidates in order to submerge them in a district in which plaintiffs believe it will be more difficult to elect a Republican candidate. Should this Court adopt plaintiffs’ standardless and politically-biased theory of liability, it will violate the rights of the Legislative Defendants, Republican and independent voters, and Republican and independent candidates under the First and Fourteenth Amendments to the United States Constitution and Article I, Secs. 10, 12, 14, and 19 of the North Carolina Constitution.

THIRD DEFENSE

Plaintiffs are asking this Court to create districts that elect Democratic candidates by removing Republican voters from districts where those voters currently elect a Republican candidate and “packing” them in other districts that already elect Republican candidates. Under

plaintiffs' standardless and politically biased theory of liability, doing so will violate the First and Fourteenth Amendments to the United States Constitution and Article I, Secs. 10, 12, 14, and 19 of the North Carolina Constitution.

FOURTH DEFENSE

Plaintiffs request that the Court grant them a right to reside or vote in districts that are drawn to favor their preferred political party at the expense of their non-preferred political party. Such a request if granted violates the First and Fourteenth Amendments to the United States Constitution and Article I, Sections 10, 12, 14, and 19 of the North Carolina Constitution.

FIFTH DEFENSE

Plaintiffs request that the Court grant them a right to reside or vote in districts that are drawn to maximize the political influence of the organizational and individual Democratic plaintiffs at the expense of the Legislative Defendants, voters for Republican and independent candidates, and Republican and independent candidates. Such a request if granted violates the First and Fourteenth Amendments to the United States Constitution and Article I, Secs. 10, 12, 14, and 19 of the North Carolina Constitution.

SIXTH DEFENSE

The North Carolina Constitution allows the General Assembly to consider partisan advantage and incumbency protection in the application of its discretionary redistricting decisions. *Stephenson v. Bartlett*, 355 N.C. 35, 562 SE.2d 377, 390 (N.C. 2002) ("*Stephenson I*"). Any court order prohibiting the Legislative Defendants from considering partisan advantage and incumbency protection would violate the First and Fourteenth Amendments to the United States Constitution and Article I, Secs. 10, 12, 14, and 19 of the North Carolina Constitution.

SEVENTH DEFENSE

Under the theory of liability described by plaintiffs, a district is always “cracked” whenever the Democratic candidate loses the district (but not when a Republican candidate loses the district). Further, districts in which Democratic voters elect a Democratic candidate are “packed” regardless of the percentage of the Democratic voters in the district (but not so with districts in which voters for Republican candidates elect a Republican candidate). Accordingly, to remedy these supposed violations, the defendants must necessarily adopt districting plans that elect only Democratic candidates where such candidates are not currently being elected, at the expense of the Legislative Defendants, voters for Republican and independent candidates, and Republican and independent candidates, in violation of the First and Fourteenth Amendments to the United States Constitution, and Article I, Secs. 10, 12, 14, and 19 of the North Carolina Constitution.

EIGHTH DEFENSE

Plaintiffs’ Amended Complaint fails to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

NINTH DEFENSE

Plaintiffs’ standardless, politically biased theory of liability, if adopted by this Court, will operate as an illegal judicial amendment of the North Carolina Constitution in violation of Article XIII of the North Carolina Constitution.

TENTH DEFENSE

The constitutional authority to draw state senate and state house districts has been reserved by the People to the General Assembly, subject to the express limitations found only in Article II, Secs. 2, 3, 4, and 5 of the North Carolina Constitution. The 2021 legislative redistricting plans fully comply with these provisions of the State Constitution.

ELEVENTH DEFENSE

In order to achieve political gain, plaintiffs are asking this Court to usurp the constitutional authority of the General Assembly to draw legislative districts in violation of the separation of powers doctrine, adopted by the People in Article I, Sec. 6 of the North Carolina Constitution.

TWELFTH DEFENSE

Plaintiffs’ politically biased, standardless theory of liability, is non-justiciable under any provision of the North Carolina Constitution, including Article I, Sec. 19, Article I, Sec. 10, and Article I, Secs. 12 and 14.

THIRTEENTH DEFENSE

Plaintiffs do not have standing to bring this action because the claims raised by Plaintiffs are non-justiciable and should be dismissed pursuant to Rule 12(b)(1), N.C.R. Civ. P.

FOURTEENTH DEFENSE

Plaintiffs’ request for equitable relief should be denied because plaintiffs have unclean hands.

FIFTEENTH DEFENSE

Plaintiffs’ complaint should be dismissed because of their failure to provide a judicially manageable standard or definition for the terms “packed,” “cracked,” or similar concepts.

SIXTEENTH DEFENSE

Legislative Defendants answer the individual allegations of Plaintiffs’ Amended Complaint as follows:

1. With regard to the allegations in paragraph 1, Legislative Defendants admit that the cited cases and other sources speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 1.

2. With regard to the allegations in paragraph 2, Legislative Defendants admit that the cited cases and other sources speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 2.

3. With regard to the allegations in paragraph 3, Legislative Defendants admit that the cited cases and other sources speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 3.

4. Legislative Defendants deny the allegations of paragraph 4.

5. Legislative Defendants deny the allegations of paragraph 5.

6. Legislative Defendants deny the allegations of paragraph 6.

7. Legislative Defendants deny the allegations of paragraph 7.

8. With regard to the allegations in paragraph 8, Legislative Defendants admit that the cited cases and other sources speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 8.

9. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 9.

10. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 10.

11. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 11.

12. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 12.

13. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 13.

14. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 14.

15. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 15.

16. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 16.

17. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 17.

18. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 18.

19. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 19.

20. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 20.

21. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 21.

22. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 22.

23. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 23.

24. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 24.

25. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 25.

26. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 26.

27. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 27.

28. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 28.

29. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 29.

30. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 30.

31. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 31.

32. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 32.

33. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 33.

34. Legislative Defendants admit the allegations of paragraph 34.

35. Legislative Defendants admit the allegations of paragraph 35.

36. Legislative Defendants admit the allegations of paragraph 36.

37. Legislative Defendants admit the allegations of paragraph 37.

38. Legislative Defendants admit the allegations of paragraph 38.

39. Legislative Defendants admit the allegations of paragraph 39.

40. Legislative Defendants admit the allegations of paragraph 40.

41. Legislative Defendants admit the allegations of paragraph 41.

42. Legislative Defendants admit the allegations of paragraph 42.

43. Legislative Defendants admit the allegations of paragraph 43.

44. Legislative Defendants deny the allegations in paragraph 44.

45. Legislative Defendants admit the allegations of paragraph 45.

46. Legislative Defendants deny the allegations in paragraph 46.

47. Legislative Defendants admit the allegations in paragraph 47.

48. Legislative Defendants admit the allegations in paragraph 48.

49. With regard to the allegations in paragraph 49, Legislative Defendants admit that North Carolina's historical election results speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 49.

50. With regard to the allegations in paragraph 50, Legislative Defendants admit that North Carolina's historical election results speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 50.

51. Legislative Defendants deny the allegations in paragraph 51.

52. With regard to the allegations in paragraph 52, Legislative Defendants admit that RSLC undertook a plan named "REDMAP," that there was a REDMAP website, and that the contents of the website speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 52.

53. Legislative Defendants deny the allegations in paragraph 53.

54. With regard to the allegations in paragraph 54, Legislative Defendants admit that North Carolina's historical campaign finance records speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 54.

55. With regard to the allegations in paragraph 55, Legislative Defendants admit that North Carolina's historical election results speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 55.

56. Legislative Defendants admit the allegations in paragraph 56.

57. Legislative Defendants admit the allegations in paragraph 57.

58. With regard to the allegations in paragraph 58, Legislative Defendants admit that the Dr. Hofeller did not communicate with Democratic members of the General Assembly during the 2011 redistricting process. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 58.

59. With regard to the allegations in paragraph 59, Legislative Defendants admit that the cited source and case speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 59.

60. With regard to the allegations in paragraph 60, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 60.

61. With regard to the allegations in paragraph 61, Legislative Defendants admit that it drew remedial maps and that at the time Republicans held supermajorities in both chambers of the General Assembly. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 61.

62. With regard to the allegations in paragraph 62, Legislative Defendants admit that the cited sources speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 62.

63. With regard to the allegations in paragraph 63, Legislative Defendants admit that on February 12, 2016, Representative Lewis and Senator Rucho were appointed co-chairs of the Joint Select Committee on Redistricting. The Joint Committee consisted of 25 Republicans and 12 Democrats. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 63.

64. With regard to the allegations in paragraph 64, Legislative Defendants admit that the Joint Committee held a public hearing on February 16, 2016. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 64.

65. Legislative Defendants admit the allegations in paragraph 65.

66. Legislative Defendants admit the allegations in paragraph 66.

67. With regard to the allegations in paragraph 67, Legislative Defendants admit that the cited source speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 67.

68. With regard to the allegations in paragraph 68, Legislative Defendants admit that the cited source speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 68.

69. Legislative Defendants admit the allegations in paragraph 69.

70. With regard to the allegations in paragraph 70, Legislative Defendants admit that the cited source speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 70.

71. Legislative Defendants admit the allegations in paragraph 71.

72. With regard to the allegations in paragraph 72, Legislative Defendants admit that the voting records maintained by the General Assembly speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 72.

73. With regard to the allegations in paragraph 73, Legislative Defendants admit that the cited sources speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 73.

74. With regard to the allegations in paragraph 74, Legislative Defendants admit that North Carolina's historical election results speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 74.

75. Legislative Defendants deny the allegations in paragraph 75.

76. With regard to the allegations in paragraph 76, Legislative Defendants admit that on August 10, 2017 the House and Senate Redistricting Committees voted on criteria to govern the plans. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 76.

77. With regard to the allegations in paragraph 77, Legislative Defendants admit that the cited source speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 77.

78. With regard to the allegations in paragraph 78, Legislative Defendants admit that the cited source speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 78.

79. With regard to the allegations in paragraph 79, Legislative Defendants admit that the cited source speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 79.

80. With regard to the allegations in paragraph 80, Legislative Defendants admit that the cited source speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 80.

81. With regard to the allegations in paragraph 81, Legislative Defendants admit that the Senate and House committees adopted the plans proposed by Dr. Hofeller. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 81.

82. With regard to the allegations in paragraph 82, Legislative Defendants admit that on August 31, 2017, the General Assembly passed the House plan (designated HB 927) and the Senate plan (designated SB 691), that no Democratic Senator voted in favor of either plan, that the sole Democratic member of the House who voted for the plans was Representative William Brisson, and that Brisson subsequently changed parties and became a Republican. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 82.

83. With regard to the allegations in paragraph 83, Legislative Defendants admit that North Carolina's historical election results speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 83.

84. With regard to the allegations in paragraph 84, Legislative Defendants admit that the remedial plans were challenged and invalidated by three-judge panels of this Court. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 84.

85. Legislative Defendants admit the allegations in paragraph 85.

86. With regard to the allegations in paragraph 86, Legislative Defendants admit that the cited case speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 86.

87. With regard to the allegations in paragraph 87, Legislative Defendants admit that the cited case speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 87.

88. With regard to the allegations in paragraph 88, Legislative Defendants admit that the cited case speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 88.

89. With regard to the allegations in paragraph 89, Legislative Defendants admit that the cited case speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 89.

90. With regard to the allegations in paragraph 90, Legislative Defendants admit that the cited order speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 90.

91. With regard to the allegations in paragraph 91, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 91.

92. With regard to the allegations in paragraph 92, Legislative Defendants admit that the cited case speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 92.

93. With regard to the allegations in paragraph 93, Legislative Defendants admit that on October 30, 2019, Speaker Moore announced the creation of a joint House and Senate Select

Committee to draw a remedial plan, and that the full House and Senate passed the remedial plan, on November 14 and 15, 2019. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 93.

94. With regard to the allegations in paragraph 94, Legislative Defendants admit that the cited order speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 94.

95. With regard to the allegations in paragraph 95, Legislative Defendants admit that the cited source speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 95.

96. With regard to the allegations in paragraph 96, Legislative Defendants admit that the Court subsequently lifted the injunction on the filing period. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 96.

97. Legislative Defendants deny the allegations in paragraph 97.

98. With regard to the allegations in paragraph 98, Legislative Defendants admit that the U.S. Census Bureau released data for states to begin redistricting efforts on August 12, 2021, that North Carolina gained a congressional seat following the 2020 census, and that North Carolina's new congressional map accordingly contains 14 congressional districts. Legislative Defendants also admit the 2021 U.S. Census Data speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 98.

99. Legislative Defendants admit the allegations in paragraph 99.

100. With regard to the allegations in paragraph 100, Legislative Defendants admit that the cited source speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 100.

101. Legislative Defendants deny the allegations in paragraph 101.

102. Legislative Defendants deny the allegations in paragraph 102.

103. Legislative Defendants deny the allegations in paragraph 103.

104. Legislative Defendants deny the allegations in paragraph 104.

105. With regard to the allegations in paragraph 105, Legislative Defendants admit that House and Senate Committees scheduled public hearings for October 25 and 26, 2021. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 105.

106. Legislative Defendants deny the allegations in paragraph 106.

107. Legislative Defendants admit the allegations in paragraph 107.

108. Legislative Defendants deny the allegations in paragraph 108.

109. Legislative Defendants deny the allegations in paragraph 109.

110. Legislative Defendants admit the allegations in paragraph 110.

111. With regard to the allegations in paragraph 111, Legislative Defendants admit that the full Senate and House passed the 2021 Congressional Plan on November 2 and November 4, 2021, respectively. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 111.

112. With regard to the allegations in paragraph 112, Legislative Defendants admit that the 2021 House Plan was voted out of the House Committee on November 1 and that the General Assembly enacted the 2021 House Plan on November 4. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 112.

113. With regard to the allegations in paragraph 113, Legislative Defendants admit that the 2021 House Plan was voted out of the House Committee on November 1 and that the General

Assembly enacted the 2021 House Plan on November 4. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 113.

114. Legislative Defendants deny the allegations in paragraph 114.

115. Legislative Defendants deny the allegations in paragraph 115.

116. Legislative Defendants deny the allegations in paragraph 116.

117. Legislative Defendants deny the allegations in paragraph 117.

118. Legislative Defendants deny the allegations in paragraph 118.

119. Legislative Defendants deny the allegations in paragraph 119.

120. With regard to the allegations in paragraph 120, Legislative Defendants admit that Plaintiff's map illustration following paragraph 120 speaks for itself. Legislative Defendants are without knowledge regarding the underlying data and source code used by Plaintiffs to generate the map illustrations, and therefore deny that it "shows the district's boundaries and the partisanship of its VTDs using a composite of the results of the 2020 North Carolina Attorney General and 2020 North Carolina Labor Commissioner races, with darker blue shading for the VTDs that voted more heavily Democratic, darker red for VTDs that voted more heavily Republican, and lighter shading for VTDs that were closer to a tie—with the shading adjusted for the VTD's population."

121. Legislative Defendants deny the allegations in paragraph 121.

122. Legislative Defendants deny the allegations in paragraph 122.

123. Legislative Defendants deny the allegations in paragraph 123.

124. Legislative Defendants deny the allegations in paragraph 124.

125. Legislative Defendants deny the allegations in paragraph 125.

126. Legislative Defendants deny the allegations in paragraph 126.

127. Legislative Defendants deny the allegations in paragraph 127.
128. Legislative Defendants deny the allegations in paragraph 128.
129. Legislative Defendants deny the allegations in paragraph 129.
130. Legislative Defendants deny the allegations in paragraph 130.
131. Legislative Defendants deny the allegations in paragraph 131.
132. Legislative Defendants deny the allegations in paragraph 132.
133. Legislative Defendants deny the allegations in paragraph 133.
134. Legislative Defendants deny the allegations in paragraph 134.
135. Legislative Defendants deny the allegations in paragraph 135.
136. Legislative Defendants deny the allegations in paragraph 136.
137. Legislative Defendants deny the allegations in paragraph 137.
138. Legislative Defendants deny the allegations in paragraph 138.
139. Legislative Defendants deny the allegations in paragraph 139.
140. Legislative Defendants deny the allegations in paragraph 140.
141. Legislative Defendants deny the allegations in paragraph 141.
142. Legislative Defendants deny the allegations in paragraph 142.
143. Legislative Defendants deny the allegations in paragraph 143.
144. Legislative Defendants deny the allegations in paragraph 144.
145. Legislative Defendants deny the allegations in paragraph 145.
146. Legislative Defendants deny the allegations in paragraph 146.
147. Legislative Defendants deny the allegations in paragraph 147.
148. Legislative Defendants deny the allegations in paragraph 148.
149. Legislative Defendants deny the allegations in paragraph 149.

150. Legislative Defendants deny the allegations in paragraph 150.

151. Legislative Defendants deny the allegations in paragraph 151.

152. Legislative Defendants deny the allegations in paragraph 152.

153. Legislative Defendants deny the allegations in paragraph 153.

154. Legislative Defendants deny the allegations in paragraph 154.

155. Legislative Defendants deny the allegations in paragraph 155.

156. With regard to the allegations in paragraph 156, Legislative Defendants admit that Plaintiff's map illustration following paragraph 156 speaks for itself. Legislative Defendants are without knowledge regarding the underlying data and source code used by Plaintiffs to generate the map illustrations, and therefore deny "the alternative grouping of these counties would have given Democrats in heavily Democratic of Bertie, Hertford, Northampton, Halifax, and Warren Counties a meaningful chance of electing a member of their choice."

157. Legislative Defendants deny the allegations in paragraph 157.

158. Legislative Defendants deny the allegations in paragraph 158.

159. Legislative Defendants deny the allegations in paragraph 159.

160. Legislative Defendants deny the allegations in paragraph 160.

161. Legislative Defendants deny the allegations in paragraph 161.

162. Legislative Defendants deny the allegations in paragraph 162.

163. Legislative Defendants deny the allegations in paragraph 163.

164. Legislative Defendants deny the allegations in paragraph 164.

COUNT ONE

165. Legislative Defendants incorporate their responses to paragraphs 1—164 as if fully set out herein.

166. With regard to the allegations in paragraph 166, Legislative Defendants admit that Article I, Section 10 of the North Carolina State Constitution speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 166.

167. With regard to the allegations in paragraph 167, Legislative Defendants admit that the cited sources speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 167.

168. With regard to the allegations in paragraph 168, Legislative Defendants admit that the cited sources speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 168.

169. With regard to the allegations in paragraph 169, Legislative Defendants admit that the cited sources and cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 169.

170. With regard to the allegations in paragraph 170, Legislative Defendants admit that the cited order speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 170.

171. With regard to the allegations in paragraph 171, Legislative Defendants admit that the cited case speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 171.

172. With regard to the allegations in paragraph 172, Legislative Defendants admit that the cited case speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 172.

COUNT TWO

173. Legislative Defendants incorporate their responses to paragraphs 1—172 as if fully set out herein.

174. With regard to the allegations in paragraph 174, Legislative Defendants admit that Article I, Section 19 of the North Carolina State Constitution speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 174.

175. With regard to the allegations in paragraph 175, Legislative Defendants admit that the cited case speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 175.

176. With regard to the allegations in paragraph 176, Legislative Defendants admit that the cited case speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 176.

177. With regard to the allegations in paragraph 177, Legislative Defendants admit that the cited order speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 177.

178. With regard to the allegations in paragraph 178, Legislative Defendants admit that the cited case speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 178.

179. With regard to the allegations in paragraph 179, Legislative Defendants admit that the cited case speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 179.

COUNT THREE

180. Legislative Defendants incorporate their responses to paragraphs 1—179 as if fully set out herein.

181. With regard to the allegations in paragraph 181, Legislative Defendants admit that Article I, Section 12 of the North Carolina State Constitution speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 181.

182. With regard to the allegations in paragraph 182, Legislative Defendants admit that Article I, Section 14 of the North Carolina State Constitution speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 182.

183. With regard to the allegations in paragraph 183, Legislative Defendants admit that the cited order and case speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 183.

184. With regard to the allegations in paragraph 184, Legislative Defendants admit that the cited case and order speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 184.

185. With regard to the allegations in paragraph 185, Legislative Defendants admit that the cited case speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 185.

186. Legislative Defendants deny the allegations in paragraph 186.

187. Legislative Defendants deny the allegations in paragraph 187.

EIGHTEENTH DEFENSE

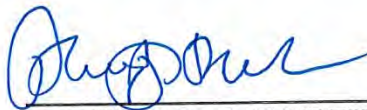
To the extent that any of the unnumbered, boldfaced fact headings or argument statements in the Amended Complaint can be construed as allegations to which a response is required, Legislative Defendants deny all such fact headings or argument statements.

PRAYER FOR RELIEF

Wherefore, Legislative Defendants respectfully request that the Court enter an order and final judgment

1. dismissing all of Plaintiffs' claims with prejudice;
2. awarding Defendants their costs and attorneys' fees; and
3. providing Defendants with such other and further relief as may be equitable and proper.

Respectfully submitted this the 17th day of December, 2021.



NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com
Thomas A. Farr (NC Bar No. 10871)
tom.farr@nelsonmullins.com
Alyssa M. Riggins (NC Bar No. 52366)
alyssa.riggins@nelsonmullins.com
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 329-3800

BAKER HOSTETLER LLP
Mark E. Braden* (DC Bar No. 419915)
MBraden@bakerlaw.com
Katherine McKnight* (VA Bar No. 81482)
kmcknight@bakerlaw.com

1050 Connecticut Ave NW, Suite 1100 Washington DC
20036

* Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

It is hereby certified that on this the 17th day of December, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com
*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
*Counsel for Plaintiffs Rebecca Harper, et
al.*

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
*Counsel for the North Carolina State Board
of Elections; Damon Circosta, Stella
Anderson, Jeff Carmon III, Stacy Eggers IV,
and Tommy Tucker, in their official
capacities with the State Board of Elections*

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

Sam Hirsch
Jessica Ring Amunson
Kali Brace
Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org

J. Tom Boer
Olivia T. Molodanof
Hogan Lovells US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com
Counsel for Intervenor Common Cause

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*



NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

REBECCA HARPER, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2021 DEC 17 P 12:38

21 CVS 015426

WAKE CO., C.S.C.

Consolidated with
21 CVS 500085

**LEGISLATIVE DEFENDANTS' ANSWER TO VERIFIED COMPLAINT FILED BY
NORTH CAROLINA LEAGUE OF CONSERVATION VOTERS, ET AL.**

Defendants Representative Destin Hall, in his official capacity as Chair of the House Standing Committee on Redistricting; Senators Warren Daniel, Ralph E. Hise, Jr., and Paul Newton, in their official capacities as Co-Chairmen of the Senate Standing Committee on Redistricting and Elections; Representative Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives; and Senator Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate (collectively, "Legislative Defendants"), by and through counsel, and answer Plaintiffs' verified complaint as follows:

INTRODUCTION

In their Verified Complaint (filed in 21 CVS 015426, which is now consolidated with 21 CVS 500085), the North Carolina League of Conservation Voters, Inc. and 15 individual Plaintiffs

challenge the redistricting maps recently enacted by the North Carolina General Assembly—the maps for the U.S. Congress (the “Enacted Congressional Plan”), the North Carolina Senate (the “Enacted Senate Plan”), and the North Carolina House of Representatives (the “Enacted House Plan”) (collectively, the “Enacted Plans”), on various grounds under the North Carolina State Constitution. Legislative Defendants deny that the Enacted Plans suffer from any constitutional infirmities.

FIRST DEFENSE

Defendants will necessarily violate the Voting Rights Act and the Fourteenth and Fifteenth Amendments of the United States Constitution if the Court grants the relief requested by Plaintiffs.

SECOND DEFENSE

Plaintiffs are asking this Court to Plaintiffs“crack” Republican voters out of districts that currently elect Republican candidates in order to submerge them in districts in which Plaintiffs believe it will be more difficult to elect Republican candidates. Should this Court adopt Plaintiffs’ standardless and politically-biased theory of liability, it will violate the rights of the Legislative Defendants, Republican voters, and Republican candidates under the First and Fourteenth Amendments to the United States Constitution and Article I, Secs. 10, 12, 14, and 19 of the North Carolina Constitution.

THIRD DEFENSE

Plaintiffs are asking this Court Plaintiffsto create districts that elect Democratic candidates by removing Republican voters from districts where those voters currently elect a Republican candidate and “pack” them in other districts that already elect Republican candidates. Under Plaintiffs’ standardless and politically-biased theory of liability, doing so will violate the First and

Fourteenth Amendments to the United States Constitution and Article I, Secs. 10, 12, 14, and 19 of the North Carolina Constitution.

FOURTH DEFENSE

Plaintiffs request that the Court grant them a right to reside or vote in districts that are drawn to favor their preferred political party at the expense of their non-preferred political party. Such a request if granted violates the First and Fourteenth Amendments to the United States Constitution and Article I, Sections 10, 12, 14, and 19 of the North Carolina Constitution.

FIFTH DEFENSE

Plaintiffs request that the Court grant them a right to reside or vote in districts that are drawn to maximize the political influence of the organizational and individual Democratic Plaintiffs at the expense of the Legislative Defendants, voters for Republican and independent candidates, and Republican and independent candidates. Such a request if granted violates the First and Fourteenth Amendments to the United States Constitution and Article I, Secs. 10, 12, 14, and 19 of the North Carolina Constitution.

SIXTH DEFENSE

The North Carolina Constitution allows the General Assembly to consider partisan advantage and incumbency protection in the application of its discretionary redistricting decisions. *Stephenson v. Bartlett*, 355 N.C. 35, 562 SE.2d 377, 390 (N.C. 2002) (“*Stephenson I*”). Plaintiffs Any court order prohibiting the Legislative Defendants from considering partisan advantage and incumbency protection would violate the First and Fourteenth Amendments to the United States Constitution and Article I, Secs. 10, 12, 14, and 19 of the North Carolina Constitution.

SEVENTH DEFENSE

Under the theory of liability described by Plaintiffs, a district is always “cracked” whenever the Democratic candidate loses the district (but not when a Republican candidate loses the district). Further, districts in which Democratic voters elect a Democratic candidate are “packed” regardless of the percentage of the Democratic voters in the district (but not so with districts in which voters for Republican candidates elect a Republican candidate). Accordingly, to remedy these supposed violations, the defendants must necessarily adopt districting plans that elect only Democratic candidates where such candidates are not currently being elected, at the expense of the Legislative Defendants, voters for Republican and independent candidates, and Republican and independent candidates, in violation of the First and Fourteenth Amendments to the United States Constitution, and Article I, Secs. 10, 12, 14, and 19 of the North Carolina Constitution.

EIGHTH DEFENSE

Plaintiffs’ claims are barred by the doctrine of laches.

NINTH DEFENSE

Plaintiffs’ Amended Complaint fails to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

TENTH DEFENSE

Plaintiffs’ standardless, politically-biased theory of liability, if adopted by this Court, will operate as an illegal judicial amendment of the North Carolina Constitution in violation of Article XIII of the North Carolina Constitution.

TWELFTH DEFENSE

The constitutional authority to draw state senate and state house districts has been reserved by the People to the General Assembly, subject to the express limitations found only in Article II,

Secs. 2, 3, 4, and 5 of the North Carolina Constitution. The 2021 legislative redistricting plans fully comply with these provisions of the State Constitution.

THIRTEENTH DEFENSE

In order to achieve political gain, Plaintiffs are asking this Court to usurp the constitutional authority of the General Assembly to draw legislative districts in violation of the separation of powers doctrine, adopted by the People in Article I, Sec. 6 of the North Carolina Constitution.

FOURTEENTH DEFENSE

Plaintiffs’ politically-biased, standardless theory of liability, is non-justiciable under any provision of the North Carolina Constitution, including Article I, Sec. 19, Article I, Sec. 10, and Article I, Secs. 12 and 14.

FIFTEENTH DEFENSE

Neither the NCLCV nor the individual Plaintiffs have standing to bring this action because the claims raised by Plaintiffs are non-justiciable and should be dismissed pursuant to Rule 12(b)(1), N.C.R. Civ. P.

SIXTEENTH DEFENSE

Plaintiffs’ request for equitable relief should be denied because Plaintiffs have unclean hands.

SEVENTEENTH DEFENSE

Plaintiffs’ complaint should be dismissed because of their failure to provide a judicially manageable standard or definition for the terms “packed,” “cracked,” and similar concepts.

EIGHTEENTH DEFENSE

Legislative Defendants answer the individual allegations of Plaintiffs’ Complaint as follows:

1. Legislative Defendants deny the allegations of paragraph 1.
2. Legislative Defendants deny the allegations of paragraph 2.
3. Legislative Defendants deny the allegations of paragraph 3.
4. Legislative Defendants deny the allegations of paragraph 4.
5. Legislative Defendants deny the allegations of paragraph 5.
6. Legislative Defendants deny the allegations of paragraph 6.
7. Legislative Defendants deny the allegations of paragraph 7.
8. Legislative Defendants deny the allegations of paragraph 8.
9. Legislative Defendants deny the allegations of paragraph 9.
10. Legislative Defendants deny the allegations of paragraph 10.

11. With regard to the allegations in paragraph 11, Legislative Defendants deny that NCLCV or its members have standing to bring the claims in this action and that NCLCV's members votes will be "systematically diluted by" the 2021 Enacted Plans. In all other respects, Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 11.

12. Legislative Defendants deny the allegations of paragraph 12.
13. Legislative Defendants deny the allegations of paragraph 13.

14. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 14.

15. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 15.

16. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 16.

17. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 17.

18. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 18.

19. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 19.

20. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 20.

21. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 21.

22. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 22.

23. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 23.

24. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 24.

25. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 25.

26. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 26.

27. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 27.

28. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 28.

29. Legislative Defendants deny the allegations of paragraph 29.

30. Legislative Defendants admit the allegations of paragraph 30.

31. Legislative Defendants admit the allegations of paragraph 31.

32. Legislative Defendants admit the allegations of paragraph 32.

33. Legislative Defendants admit the allegations of paragraph 33.

34. Legislative Defendants admit the allegations of paragraph 34.

35. Legislative Defendants admit the allegations of paragraph 35.

36. Legislative Defendants admit the allegations of paragraph 36.

37. Legislative Defendants admit the allegations of paragraph 37.

38. Legislative Defendants admit the allegations of paragraph 38.

39. Legislative Defendants admit the allegations of paragraph 39.

40. Legislative Defendants admit the allegations of paragraph 40.

41. Legislative Defendants admit the allegations of paragraph 41.

42. Legislative Defendants admit the allegations of paragraph 42.

43. Legislative Defendants admit the allegations of paragraph 43.

44. Legislative Defendants deny the allegations in paragraph 44.

45. Legislative Defendants admit the allegations of paragraph 45.

46. Legislative Defendants admit the allegations of paragraph 46.

47. With regard to the allegations in paragraph 47, Legislative Defendants admit that the North Carolina State Constitution speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 47.

48. With regard to the allegations in paragraph 48, Legislative Defendants admit that the North Carolina State Constitution speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations of paragraph 48. (a—d).

49. With regard to the allegations in paragraph 49, Legislative Defendants admit that the North Carolina State Constitution speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 49. (a—d).

50. With regard to the allegations in paragraph 50, Legislative Defendants admit that the cited cases speak for themselves. Legislative Defendants deny that the Enacted Plans constitute “extreme partisan gerrymandering” or “dilute and devalue the votes of some citizens compared to others.” Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 50.

51. With regard to the allegations in paragraph 51, Legislative Defendants admit that the Voting Rights Act of 1965 speaks for itself. Legislative Defendants deny that the Enacted Plans violate the Voting Rights Act of 1965. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 51.

52. With regard to the allegations in paragraph 52, Legislative Defendants admit that the cited cases speak for themselves. Legislative Defendants deny that the Enacted Plans violate any of the quoted requirements. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 52. (a—i).

53. With regard to the allegations in paragraph 53, Legislative Defendants admit that the cited cases and other sources speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 53.

54. With regard to the allegations in paragraph 54, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 54.

55. With regard to the allegations in paragraph 55, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 55.

56. With regard to the allegations in paragraph 56, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 56.

57. Legislative Defendants deny the allegations in paragraph 57. (a—e).

58. With regard to the allegations in paragraph 58, Legislative Defendants admit that the cited statistical sources speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 58.

59. Legislative Defendants deny the allegations in paragraph 59.

60. Legislative Defendants admit the allegations in paragraph 60.

61. Legislative Defendants admit the allegations in paragraph 61.

62. Legislative Defendants admit the allegations in paragraph 62.

63. Legislative Defendants admit the allegations in paragraph 63.

64. With regard to the allegations in paragraph 64, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 64.

65. With regard to the allegations in paragraph 65, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 65.

66. With regard to the allegations in paragraph 66, Legislative Defendants admit that the cited sources for the quoted language speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 66.

67. Legislative Defendants deny the allegations in paragraph 67.

68. With regard to the allegations in paragraph 68, Legislative Defendants admit that the cited source speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 68.

69. With regard to the allegations in paragraph 69, Legislative Defendants admit that the cited source speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 69.

70. With regard to the allegations in paragraph 70, Legislative Defendants admit that the cited source speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 70.

71. With regard to the allegations in paragraph 71, Legislative Defendants admit that the cited source speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 71.

72. With regard to the allegations in paragraph 72, Legislative Defendants admit that the committee held 13 public hearings during September. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 72.

73. With regard to the allegations in paragraph 73, Legislative Defendants admit that the cited sources speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 73.

74. Legislative Defendants deny the allegations in paragraph 74.

75. With regard to the allegations in paragraph 75, Legislative Defendants admit that beginning October 6, 2021, committee members were permitted to draw congressional and legislative maps in the hearing rooms. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 75.

76. With regard to the allegations in paragraph 76, Legislative Defendants admit that on October 21, 2021 the committee announced public hearings to be held on October 25 and 26. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 76.

77. Legislative Defendants admit the allegations in paragraph 77.

78. With regard to the allegations in paragraph 78, Legislative Defendants admit that the committee held a public hearing on November 1, 2021 and enacted the maps on November 4, 2021. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 78.

79. Legislative Defendants admit the allegations in paragraph 79, but deny any implication arising from the allegations that the Senate Restricting Committee acted improperly or acted for any improper reason in considering or approving the Enacted Maps.

80. Legislative Defendants admit the allegations in paragraph 80, but deny any implication arising from the allegations that the House Restricting Committee acted improperly or acted for any improper reason in considering or approving the Enacted Maps.

81. Legislative Defendants admit the allegations in paragraph 81, but deny any implication arising from the allegations that the Senate Restricting Committee acted improperly or acted for any improper reason in considering or approving the Enacted Maps.

82. With regard to the allegations in paragraph 82, Legislative Defendants admit that the cited statistical sources speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 82.

83. With regard to the allegations in paragraph 83, Legislative Defendants admit that the cited statistical sources speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 83.

84. Paragraph 84 alleges statement of opinion. To the extent the opinions imply that the Enacted Maps are not “fair districting maps,” Legislative Defendants deny the allegation in paragraph 84.

85. Legislative Defendants deny the allegations in paragraph 85.

86. Legislative Defendants deny the allegations in paragraph 86.

87. Legislative Defendants deny the allegations in paragraph 87.

88. Legislative Defendants deny the allegations in paragraph 88.

89. Legislative Defendants deny the allegations in paragraph 8

90. Legislative Defendants deny the allegations in paragraph 90.

91. With regard to the allegations in paragraph 91, Legislative Defendants admit that the North Carolina’s historical election results speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 91. (a—d).

92. Legislative Defendants deny the allegations in paragraph 92.

93. Legislative Defendants deny the allegations in paragraph 93.

94. Legislative Defendants deny the allegations in paragraph 94.

95. Legislative Defendants deny the allegations in paragraph 95. (a—c., and second “a.”).

96. Legislative Defendants deny the allegations in paragraph 96.

97. Legislative Defendants deny the allegations in paragraph 97.

98. With regard to the allegations in paragraph 98, Legislative Defendants admit that the cited sources speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 98.

99. Legislative Defendants deny the allegations in paragraph 99.

100. Legislative Defendants deny the allegations in paragraph 100.

101. With regard to paragraph 101, the cited North Carolina’s historical election results speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 101. (a—e).

102. Legislative Defendants deny the allegations in paragraph 102.

103. Legislative Defendants deny the allegations in paragraph 103.

104. Legislative Defendants deny the allegations in paragraph 104. (a—c).

105. Legislative Defendants deny the allegations in paragraph 105. (a—d).

106. Legislative Defendants deny the allegations in paragraph 106.

107. Legislative Defendants deny the allegations in paragraph 107. (a—c).

108. Legislative Defendants deny the allegations in paragraph 108.

109. Legislative Defendants deny the allegations in paragraph 109.

110. Legislative Defendants deny the allegations in paragraph 110.

111. Legislative Defendants deny the allegations in paragraph 111.

112. Legislative Defendants deny the allegations in paragraph 112.

113. Legislative Defendants deny the allegations in paragraph 113

114. Legislative Defendants deny the allegations in paragraph 114.

115. With regard to paragraph 115, the cited North Carolina’s historical election results speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 115. (a—e).

116. Legislative Defendants deny the allegations in paragraph 116.

117. Legislative Defendants deny the allegations in paragraph 117.

118. Legislative Defendants deny the allegations in paragraph 118.

119. Legislative Defendants deny the allegations in paragraph 119.

120. Legislative Defendants deny the allegations in paragraph 120.

121. Legislative Defendants deny the allegations in paragraph 121.

122. Legislative Defendants deny the allegations in paragraph 122.

123. Legislative Defendants deny the allegations in paragraph 123.

124. Legislative Defendants deny the allegations in paragraph 124.

125. Legislative Defendants deny the allegations in paragraph 125.

126. Legislative Defendants deny the allegations in paragraph 126.

127. Legislative Defendants deny the allegations in paragraph 127.

128. Legislative Defendants deny the allegations in paragraph 128.

129. Legislative Defendants deny the allegations in paragraph 129.

130. Legislative Defendants deny the allegations in paragraph 130.

131. Legislative Defendants deny the allegations in paragraph 131.

132. Legislative Defendants deny the allegations in paragraph 132.

133. With regard to the allegations in paragraph 133, Legislative Defendants admit that the cited sources speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 133.

134. Legislative Defendants deny the allegations in paragraph 134.

135. Legislative Defendants deny the allegations in paragraph 135. (a—c).

136. With regard to the allegations in paragraph 136, Legislative Defendants admit that the cited source speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 136.

137. Legislative Defendants deny the allegations in paragraph 137.

138. Legislative Defendants deny the allegations in paragraph 138.

139. Legislative Defendants deny the allegations in paragraph 139.

140. Legislative Defendants deny the allegations in paragraph 140.

141. With regard to the allegations in paragraph 141, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 141.

142. With regard to the allegations in paragraph 142, Legislative Defendants admit that the cited source speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 142.

143. Legislative Defendants deny the allegations in paragraph 143.

144. Legislative Defendants deny the allegations in paragraph 144. (a—f).

145. Legislative Defendants deny the allegations in paragraph 145. (a—b).

146. Legislative Defendants deny the allegations in paragraph 146. (a—c).

147. Legislative Defendants deny the allegations in paragraph 147.

148. Legislative Defendants deny the allegations in paragraph 148.

149. Legislative Defendants deny the allegations in paragraph 149.

150. Legislative Defendants deny the allegations in paragraph 150.

151. Legislative Defendants deny the allegations in paragraph 151.

152. Legislative Defendants deny the allegations in paragraph 152.

153. Legislative Defendants deny the allegations in paragraph 153.

154. Legislative Defendants deny the allegations in paragraph 154.

155. Legislative Defendants deny the allegations in paragraph 155.

156. Legislative Defendants deny the allegations in paragraph 156.

157. Legislative Defendants deny the allegations in paragraph 157.

158. With regard to the allegations in paragraph 158, the allegations merely identify the figure following paragraph 158 and the exhibits attached to the NCLCV Complaint and does not require a response.

159. With regard to the allegations in paragraph 159, Legislative Defendants admit that Plaintiff's so-called "Optimized Maps" speak for themselves. Legislative Defendants are without knowledge regarding the underlying data and source code used by Plaintiffs to generate the "Optimized Maps" and can neither admit nor deny the hypothetical election results arising from those maps contained in Table 1.

160. With regard to the allegations in paragraph 160, Legislative Defendants admit that Plaintiff's so-called "Optimized Maps" speak for themselves. Legislative Defendants are without knowledge regarding the underlying data and source code used by Plaintiffs to generate the "Optimized Maps" and can neither admit nor deny the accuracy of the hypothetical election results arising from those maps contained in Figure 5.

161. With regard to the allegations in paragraph 161, Legislative Defendants admit that Plaintiff's so-called "Optimized Maps" speak for themselves. Legislative Defendants are without knowledge regarding the underlying data and source code used by Plaintiffs to generate the "Optimized Maps" and can neither admit nor deny the accuracy of the hypothetical election results arising from those maps contained in Figure 5.

162. With regard to the allegations in paragraph 162, Legislative Defendants admit that Plaintiff's so-called "Optimized Maps" speak for themselves. Legislative Defendants are without knowledge regarding the underlying data and source code used by Plaintiffs to generate the "Optimized Maps" and can neither admit nor deny the accuracy of the measurements alleged.

163. With regard to the allegations in paragraph 163, Legislative Defendants admit that Plaintiff's so-called "Optimized Maps" speak for themselves. Except to the extent admitted herein, Legislative Defendants deny the allegations in paragraph 163.

164. With regard to the allegations in paragraph 164, Legislative Defendants admit that Plaintiff's so-called "Optimized Maps" speak for themselves. Except to the extent admitted herein, Legislative Defendants deny the allegations in paragraph 164.

165. With regard to the allegations in paragraph 165, the allegations merely identify figures set out in and exhibits attached to the NCLCV Complaint and does not require a response.

166. With regard to the allegations in paragraph 166, Legislative Defendants admit that Plaintiff's so-called "Optimized Maps" speak for themselves. Legislative Defendants are without knowledge regarding the underlying data and source code used by Plaintiffs to generate the "Optimized Maps" and can neither admit nor deny the accuracy of the hypothetical election results arising from those maps contained in Table 2.

167. With regard to the allegations in paragraph 167, Legislative Defendants admit that Plaintiff's so-called "Optimized Maps" speak for themselves. Legislative Defendants are without knowledge regarding the underlying data and source code used by Plaintiffs to generate the "Optimized Maps" and can neither admit nor deny the hypothetical election results arising from those maps contained in Figure 7.

168. With regard to the allegations in paragraph 168, Legislative Defendants admit that Plaintiff's so-called "Optimized Maps" speak for themselves. Legislative Defendants are without knowledge regarding the underlying data and source code used by Plaintiffs to generate the "Optimized Maps" and can neither admit nor deny the accuracy of the hypothetical election results arising from those maps contained in Figure 7.

169. With regard to the allegations in paragraph 169, Legislative Defendants admit that Plaintiff's so-called "Optimized Maps" speak for themselves. Legislative Defendants are without knowledge regarding the underlying data and source code used by Plaintiffs to generate the "Optimized Maps" and can neither admit nor deny the accuracy of the measurements alleged.

170. With regard to the allegations in paragraph 170, Legislative Defendants admit that Plaintiff's so-called "Optimized Maps" speak for themselves. Except to the extent admitted herein, Legislative Defendants deny the allegations in paragraph 170.

171. With regard to the allegations in paragraph 171, Legislative Defendants admit that Plaintiff's so-called "Optimized Maps" speak for themselves. Except to the extent admitted herein, Legislative Defendants deny the allegations in paragraph 171.

172. With regard to the allegations in paragraph 172, Legislative Defendants admit that Plaintiff's so-called "Optimized Maps" speak for themselves. Except to the extent admitted herein, Legislative Defendants deny the allegations in paragraph 172.

173. With regard to the allegations in paragraph 173, the allegations merely identify figures set out in and exhibits attached to the NCLCV Complaint and does not require a response.

174. With regard to the allegations in paragraph 174, Legislative Defendants admit that Plaintiff's so-called "Optimized Maps" speak for themselves. Legislative Defendants are without knowledge regarding the underlying data and source code used by Plaintiffs to generate the "Optimized Maps" and can neither admit nor deny the accuracy of the hypothetical election results arising from those maps contained in Table 3.

175. With regard to the allegations in paragraph 175, Legislative Defendants admit that Plaintiff's so-called "Optimized Maps" speak for themselves. Legislative Defendants are without knowledge regarding the underlying data and source code used by Plaintiffs to generate the "Optimized Maps" and can neither admit nor deny the hypothetical election results arising from those maps contained in Figure 9.

176. With regard to the allegations in paragraph 176, Legislative Defendants admit that Plaintiff's so-called "Optimized Maps" speak for themselves. Legislative Defendants are without knowledge regarding the underlying data and source code used by Plaintiffs to generate the "Optimized Maps" and can neither admit nor deny the hypothetical election results arising from those maps contained in Figure 9.

177. With regard to the allegations in paragraph 177, Legislative Defendants admit that Plaintiff's so-called "Optimized Maps" speak for themselves. Legislative Defendants are without knowledge regarding the underlying data and source code used by Plaintiffs to generate the "Optimized Maps" and can neither admit nor deny the accuracy of the measurements alleged.

178. With regard to the allegations in paragraph 178, Legislative Defendants admit that Plaintiff's so-called "Optimized Maps" speak for themselves. Except to the extent admitted herein, Legislative Defendants deny the allegations in paragraph 178.

179. With regard to the allegations in paragraph 179, Legislative Defendants admit that Plaintiff's so-called "Optimized Maps" speak for themselves. Except to the extent admitted herein, Legislative Defendants deny the allegations in paragraph 179.

180. With regard to the allegations in paragraph 180, Legislative Defendants admit that Plaintiff's so-called "Optimized Maps" speak for themselves. Except to the extent admitted herein, Legislative Defendants deny the allegations in paragraph 180.

181. Legislative Defendants admit the allegations in paragraph 181.

182. Legislative Defendants admit the allegations in paragraph 182.

183. With regard to the allegations in paragraph 183, Legislative Defendants admit that the primary election schedules for the various states are public record and speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 183.

184. With regard to the allegations in paragraph 184, Legislative Defendants admit that the cited sources speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 184.

185. With regard to the allegations in paragraph 185, Legislative Defendants admit that the cited sources speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 185.

186. With regard to the allegations in paragraph 186, Legislative Defendants admit that the census data was not released by the federal government until August 12, 2021 and that the

cited sources speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 186.

187. Legislative Defendants deny the allegations in paragraph 187.

188. With regard the allegations in paragraph 188, Legislative Defendants admit that the cited statutes and cases speak for themselves. Legislative Defendants deny the allegations in paragraph 188.

189. With regard the allegations in paragraph 189, Legislative Defendants admit that the cited statutes and cases speak for themselves. Legislative Defendants deny the allegations in paragraph 189.

190. Legislative Defendants deny the allegations in paragraph 190.

191. With regard to the allegations in paragraph 191, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 191.

192. Legislative Defendants deny the allegations in paragraph 192.

193. Legislative Defendants deny the allegations in paragraph 193.

COUNT I

194. Legislative Defendants incorporate their responses to paragraphs 1—193 as if fully set out herein.

195. With regard to the allegations in paragraph 195, Legislative Defendants admit that Article I, Section 10 of the North Carolina State Constitution speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 195.

196. With regard to the allegations in paragraph 196, Legislative Defendants admit that the cited case speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 196.

197. With regard to the allegations in paragraph 197, Legislative Defendants admit that the cited case speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 197.

198. With regard to the allegations in paragraph 198, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 198.

199. With regard to the allegations in paragraph 199, Legislative Defendants admit that the cited case speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 199.

200. With regard to the allegations in paragraph 200, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 200.

201. Legislative Defendants deny the allegations in paragraph 201.

202. Legislative Defendants deny the allegations in paragraph 202.

203. Legislative Defendants deny the allegations in paragraph 203.

COUNT II

204. Legislative Defendants incorporate their responses to paragraphs 1—203 as if fully set out herein.

205. With regard to the allegations in paragraph 205, Legislative Defendants admit that Article I, Section 19 of the North Carolina State Constitution speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 205.

206. With regard to the allegations in paragraph 206, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 206.

207. With regard to the allegations in paragraph 207, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 207.

208. With regard to the allegations in paragraph 208, Legislative Defendants admit that the cited case speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 208.

209. With regard to the allegations in paragraph 209, Legislative Defendants admit that the cited case speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 209.

210. Legislative Defendants deny the allegations in paragraph 210.

211. Legislative Defendants deny the allegations in paragraph 211.

212. Legislative Defendants deny the allegations in paragraph 212.

COUNT III

213. Legislative Defendants incorporate their responses to paragraphs 1—212 as if fully set out herein.

214. With regard to the allegations in paragraph 214, Legislative Defendants admit that Article I, Section 12 of the North Carolina State Constitution speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 214.

215. With regard to the allegations in paragraph 215, Legislative Defendants admit that Article I, Section 14 of the North Carolina State Constitution speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 215.

216. With regard to the allegations in paragraph 216, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 216.

217. With regard to the allegations in paragraph 217, Legislative Defendants admit that the cited case speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 217.

218. With regard to the allegations in paragraph 218, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 218.

219. With regard to the allegations in paragraph 219, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 219.

220. With regard to the allegations in paragraph 220, Legislative Defendants admit that the cited case and cited source speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 220.

221. Legislative Defendants deny the allegations in paragraph 221.

222. Legislative Defendants deny the allegations in paragraph 222.

223. Legislative Defendants deny the allegations in paragraph 223.

COUNT IV

224. Legislative Defendants incorporate their responses to paragraphs 1—223 as if fully set out herein.

225. With regard to the allegations in paragraph 225, Legislative Defendants admit that the Free Elections Clause of the North Carolina State Constitution speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 225.

226. With regard to the allegations in paragraph 226, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 226.

227. With regard to the allegations in paragraph 227, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 227.

228. With regard to the allegations in paragraph 228, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 228.

229. Legislative Defendants deny the allegations in paragraph 229.

230. Legislative Defendants deny the allegations in paragraph 230.

231. Legislative Defendants deny the allegations in paragraph 231.

232. Legislative Defendants deny the allegations in paragraph 232.

COUNT V

233. Legislative Defendants incorporate their responses to paragraphs 1—232 as if fully set out herein.

234. With regard to the allegations in paragraph 234, Legislative Defendants admit that the Equal Protection Clause of the North Carolina State Constitution speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 234.

235. With regard to the allegations in paragraph 235, Legislative Defendants admit that the cited case speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 235.

236. With regard to the allegations in paragraph 236, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 236.

237. Legislative Defendants deny the allegations in paragraph 237.

238. Legislative Defendants deny the allegations in paragraph 238.

239. Legislative Defendants deny the allegations in paragraph 239.

240. Legislative Defendants deny the allegations in paragraph 240.

241. Legislative Defendants deny the allegations in paragraph 241.

COUNT VI

242. Legislative Defendants incorporate their responses to paragraphs 1—241 as if fully set out herein.

243. With regard to the allegations in paragraph 243, Legislative Defendants admit that Article II, Section 3(3) of the North Carolina State Constitution speaks for itself. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 243.

244. With regard to the allegations in paragraph 244, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 244.

245. Legislative Defendants deny the allegations in paragraph 245.

246. With regard to the allegations in paragraph 246, Legislative Defendants admit that the cited cases speak for themselves. Except as specifically admitted herein, Legislative Defendants deny the allegations in paragraph 246.

247. Legislative Defendants deny the allegations in paragraph 247.

248. Legislative Defendants deny the allegations in paragraph 248.

EIGHTEENTH DEFENSE

To the extent that any of the unnumbered, boldfaced fact headings or argument statements in the Verified Complaint can be construed as allegations to which a response is required, Legislative Defendants deny all such fact headings or argument statements.

PRAYER FOR RELIEF

Wherefore, Defendants respectfully request that the Court enter an order and final judgment

1. dismissing all of Plaintiffs' claims with prejudice;
2. awarding Defendants their costs and attorneys' fees; and
3. providing Defendants with such other and further relief as may be equitable and proper.

Respectfully submitted this the 17th day of December, 2021.



NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com
Thomas A. Farr (NC Bar No. 10871)
tom.farr@nelsonmullins.com
Alyssa M. Riggins (NC Bar No. 52366)

alyssa.riggins@nelsonmullins.com
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 329-3800

BAKER HOSTETLER LLP
Mark E. Braden* (DC Bar No. 419915)
MBraden@bakerlaw.com
Katherine McKnight* (VA Bar No. 81482)
kmcknight@bakerlaw.com
1050 Connecticut Ave NW, Suite 1100 Washington DC
20036
* Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

It is hereby certified that on this the 17th day of December, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com
*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
*Counsel for Plaintiffs Rebecca Harper, et
al.*

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
*Counsel for the North Carolina State Board
of Elections; Damon Circosta, Stella
Anderson, Jeff Carmon III, Stacy Eggers IV,
and Tommy Tucker, in their official
capacities with the State Board of Elections*

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

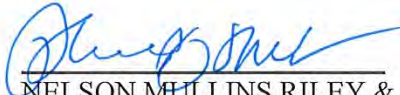
Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org

J. Tom Boer
Olivia T. Molodanof
Hogan Lovells US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com
Counsel for Intervenor Common Cause

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*



NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426, 21 CVS 500085

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, INC.;
HENRY M. MICHAUX, JR., et al.,

Plaintiffs,

REBECCA HARPER, et al.,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

NCLCV PLAINTIFFS’
OPPOSITION TO MOTION FOR
PARTIAL RECONSIDERATION

The NCLCV Plaintiffs hereby oppose the Motion for Partial Reconsideration (the “Motion”) filed by the Legislative Defendants. Appropriate circumstances for reconsideration “rarely arise”; instead, the “three permissible grounds” are “(1) the discovery of new evidence, (2) an intervening development or change in the controlling law, or (3) the need to correct a clear error or prevent manifest injustice.” *Charlotte Student Hous. DST v. Choate Constr. Co.*, No. 18 CVS 5148, 2019 WL 1405851, at *3 (N.C. Super. Mar. 26, 2019). The Legislative Defendants invoke the third ground, *see* Mot. 6, but they fail to show any error, much less clear error or manifest injustice.

As this Court’s December 15, 2021 Order correctly held, expert discovery encompasses only the facts and data considered by an expert in forming her opinions and “cannot compel production of materials never received or considered by an opposing party’s expert.” Dec. 15 Order 4. In resisting that straightforward conclusion, the Motion largely rehashes arguments “the

Court has already addressed and resolved,” which “is not a sound basis for seeking reconsideration.” *Charlotte Student Hous.*, 2019 WL 1405851, at *4; *see id.* (“it would be inappropriate to grant relief where the motion merely asks the Court to rethink what the Court had already thought through”). Indeed, the single supposedly new doctrine the Legislative Defendants invoke—that one expert cannot “parrot” another expert’s conclusions—is also simply a repackaged version of arguments the Court already rejected. And even on its own terms, that rule is entirely irrelevant. First, that rule is not a basis for the type of compelled disclosures that the Legislative Defendants seek. Second, and more important, Professor Duchin does not parrot anyone else’s conclusions. She relies on her own analysis of objective features of the Enacted Plans and the Optimized Maps. The Legislative Defendants’ contrary arguments lack merit, and the Motion should be denied.

ARGUMENT

This Court’s December 15 Order applied a straightforward rule to reach a straightforward result. In North Carolina, expert discovery encompasses “[t]he facts or data considered by the [expert] witness in forming” his or her opinions. Dec. 15 Order 4 (quoting Rule 26(b)(4)). Based on that rule, the Court ordered the NCLCV Plaintiffs to promptly produce “all source code, source data, input parameters, and all outputted data” that their expert witness, Professor Duchin, used and considered in producing her preliminary-injunction-stage report. *Id.* at 6. Pursuant to this Court’s Order, the NCLCV Plaintiffs yesterday produced to the Legislative Defendants all the facts and data that Professor Duchin considered in forming her opinions and creating her report, including source code, source data, input parameters, and outputted data. That production included, among other things:

- Municipal Block Assignment File (NCLCVP_LD_00001)
- NC Seats & Votes Data (NCLCVP_LD_00002)

- Optimized Congressional Plan Block Assignment File (NCLCVP_LD_0003)
- Optimized Senate Plan Block Assignment File (NCLCVP_LD_00007)
- Optimized House Plan Block Assignment File (NCLCVP_LD_00005)
- NC Data File (NCLCVP_LD_00004)
- Email from S. Hirsch to M. Duchin re NC Data File (NCLCVP_LD_00018–NCLCVP_LD_00019)
- NC Incumbent Report (NCLCVP_LD_00006)
- North Carolina House Clusters 2021 (NCLCVP_LD_00008–NCLCVP_LD_000017)
- *Gerrymandering & Compactness* (NCLCVP_LD_00020–NCLCVP_LD_00029)
- *Locating the Representational Baseline: Republicans in Massachusetts* (NCLCVP_LD_00030–NCLCVP_LD_00045)
- *Computational Redistricting and the Voting Rights Act* (NCLCVP_LD_00046–NCLCVP_LD_00080)
- *NC General Assembly County Clusterings for the 2020 Census* (NCLCVP_LD_00081–NCLCVP_LD_00095)
- *Gerrymandering Jumble Map Projections Permute Districts Compactness Scores* (NCLCVP_LD_00096–NCLCVP_LD_00115)
- Scripts of M. Duchin (NCLCV_LD_00116), including:
 - Plan_metrics.py,
 - Score_non_recom_plans.py,
 - Summarize_proposed_plans.py,
 - Block_to_vtd_mapping.py,
 - Plan_stat_report.py,
 - Polsby_per_dist.py,
 - Vtd_splits.py,
 - Colors.py,
 - Dissolve.py,
 - Dualgraph.py,
 - Drawgraph.py,
 - Drawplan.py,

- Partisanship.py,
- Test_geography.py, and
- Test_mapping.py

The same rule the Court applied to require this production, however, has a flip side, which the Court also reaffirmed: “[P]arties are not entitled to more discovery than Rule 26 permits and cannot compel production of materials never received or considered by an opposing party’s expert.” Dec. 15 Order 4. The Court therefore specified that “NCLCV Plaintiffs are not required to produce any documents or information that Professor Moon Duchin did not consider or receive.”

Id.

Now, the Legislative Defendants ask this Court to reconsider its ruling and “br[ing] within the scope of the Court’s order” concerning “production of expert materials” “documents or information that Professor Moon Duchin ***did not*** consider or receive.” Mot. 1–2 (emphasis added) (quotation marks omitted).¹ But while the Legislative Defendants gesture briefly toward Rule 26 in support of that remarkable request, Mot. 3–4, they again do not engage with what either Rule 26 or this Court’s Order ***says*** about expert disclosures: Parties must identify the “facts or data considered by the witness,” no less and no more. *See* Rule 26(b)(4). Nor do the Legislative Defendants engage with the settled law, cited by the NCLCV Plaintiffs in their Opposition to the Motion to Compel, holding that expert discovery may not go beyond the information that the expert considered in forming his or her opinions. *E.g., Peterson v. Seagate US LLC*, No. CIV. 07-2502

¹ To justify their request for reconsideration, the Legislative Defendants incorrectly aver that they did not previously “have the opportunity to rebut [the NCLCV Plaintiffs’] arguments,” given the “short time between the *NCLCV* Plaintiffs’ motion for a protective order and the Court’s order granting that motion.” Mot. 1. The NCLCV Plaintiffs, however, did not file any motion for a protective order. This is just one of many instances in which the Legislative Defendants are careless with the facts and the law.

MJD AJB, 2011 WL 861580, at *1 (D. Minn. Feb. 2, 2011) (“The court declines to reconsider its prior order and also declines to compel production of evaluation materials that were not considered by the defendant’s own experts in arriving at opinions”); *United States v. Am. Exp. Co.*, No. 10-CV-4496 NGG RER, 2014 WL 2879811, at *7 (E.D.N.Y. June 24, 2014) (“Rule 26 does not require production of data that was neither received nor considered by” the expert); *In re Google Adwords Litig.*, No. 03-3369, 2010 WL 5185738, at *5 (N.D. Cal. Dec. 8, 2010) (“[S]ince Mothner did not specifically review, generate, or rely upon any underlying click data, Google need not disclose this data to Plaintiffs.”).²

Instead, the Legislative Defendants largely rely on the same arguments that this Court already considered and rejected. To be sure, the Legislative Defendants tellingly *no longer* make a key argument from their prior Motion to Compel—that the lack of immediate expert disclosures is “highly prejudicial” because the Legislative Defendants were “unable to prepare opposing expert reports on [a] highly expedited time frame.” Legislative Defendants’ Motion to Compel (“MTC”) 2. The Legislative Defendants dropped that argument because, after the NCLCV Plaintiffs’ fulsome production described above, they now have everything they need to replicate and test Professor Duchin’s analysis. As to the Optimized Maps specifically, however, the Legislative Defendants simply recycle the same claims they offered before—that these maps “were critical to the preliminary-injunction stage litigation,” that the NCLCV Plaintiffs’ Verified Complaint referenced the Optimized Maps, and that the methods underlying the creation of the Optimized Maps must be disclosed because they “cannot be separated from” materials that “were publicly filed.” *Id.* at 3, 9–10; *see* Mot. 1–2, 5 (similar arguments). The answer to all those claims,

² *See Tetra Tech Tesoro, Inc. v. JAAAT Tech. Servs., LLC*, 250 N.C. App. 791, 797–98, 794 S.E.2d 535, 539 (2016) (“This Court has long held that federal decisions interpreting the federal rules are persuasive authority when interpreting similar state rules.”).

however, is the one the Court already provided: What matters is that “parties are not entitled to more discovery than Rule 26 permits and cannot compel production of materials never received or considered by an opposing party’s expert.” Dec. 15 Order 4.

Straining to avoid the Court’s straightforward conclusion, the Legislative Defendants invoke the rule—which has nothing to do with discovery—that an “expert must present an independent opinion obtained through his or her own analysis and not merely ‘surrogate testimony’ parroting otherwise inadmissible statements.” Mot. 4 (quoting *State v. Ortiz-Zape*, 367 N.C. 1, 9, 743 S.E.2d 156, 162 (2013)). There is a good reason, however, that the Legislative Defendants’ Motion to Compel did not invoke that rule: It is entirely irrelevant to the question at hand.

First, the Legislative Defendants’ argument fails at the threshold: None of their cases relied on the anti-parroting rule to **compel discovery**. Instead, those cases are about admissibility and proof. *See State v. Ortiz-Zape*, 367 N.C. 1, 14, 743 S.E.2d 156, 165 (2013) (no error in trial court’s “admission of an independent expert opinion based on the expert’s own scientific analysis”); *Dura Auto. Sys. of Indiana, Inc. v. CTS Corp.*, 285 F.3d 609, 612 (7th Cir. 2002) (district judge was “reasonable” in “striking testimony” on the ground that it constituted “untimely expert witness reports”); *Matter of James Wilson Assocs.*, 965 F.2d 160, 172 (7th Cir. 1992) (“bankruptcy judge was entitled to exclude the [expert’s] evidence as hearsay”); *TK-7 Corp. v. Est. of Barbouti*, 993 F.2d 722, 732–33 (10th Cir. 1993) (expert’s testimony was inadmissible and “insufficient to establish plaintiff’s entitlement to damages”); *State v. Craven*, 367 N.C. 51, 57, 744 S.E.2d 458, 462 (2013) (“admission of the out-of-court testimonial statements from ... lab reports was error”); *see also* 29 Wright & Miller, *Federal Practice & Procedure Evid.* § 6274 (2d ed.) (discussing admissibility of expert testimony under Rule 703 of the Federal Rules of Evidence).

Second, and more fundamentally, the anti-parroting rule is irrelevant because Professor

Duchin has not parroted any other expert’s opinions. The case the Legislative Defendants rely on illustrates when that rule applies: An “engineer” analyzed the “physical condition of a building,” but then an architect “planned to testify about” the engineer’s opinion. *James Wilson*, 965 F.2d at 172. That was improper, the Seventh Circuit held, because the architect could offer opinions only “within [his] domain of expertise” and could not serve as “the engineer’s spokesman.” *Id.* at 173.

Professor Duchin is no one’s parrot, and no one’s spokesperson. Tellingly, the Legislative Defendants do not cite a single sentence in Professor Duchin’s affidavit that parroted any conclusion of any other expert. That is because Professor Duchin’s conclusions are entirely her own. As the NCLCV Plaintiffs explained at length in their Opposition to the Motion to Compel, Professor Duchin received the “block-assignment files” providing the complete data for both the Enacted Plans and what the NCLCV Plaintiffs have identified as their “Optimized Maps.” NCLCV Opp. to Mot. to Compel at 5 (“MTC Opp.”). Then, she analyzed the features of both maps, such as whether they objectively created a partisan skew and whether North Carolina’s political geography compelled any such skew. She concluded that the Enacted Plans yield an “egregious partisan imbalance.” Duchin Aff. 3 (attached as Ex. A to MTC Opp.). And she concluded that the maps the NCLCV Plaintiffs had provided lacked this “massive and entrenched partisan skew” and thus “show[ed] that nothing about the state’s political geography compel[led]” the skew in the Enacted Plans. *Id.*

In cases like this one, where an expert offers his or her own conclusions, the anti-parroting rule does not apply. *See, e.g., State v. Sanchez*, 259 N.C. App. 939, 939, 814 S.E.2d 625, 625 (2018) (expert did not impermissibly serve as a “surrogate” because he “did not repeat any out-of-court statements by a non-testifying analyst” and instead “formed an independent opinion based on his analysis of data reasonably relied upon by experts in his field”); *Fletcher v. Doig*, 196 F.

Supp. 3d 817, 828–29 (N.D. Ill. 2016) (rejecting “mouthpiece” argument because the testifying expert “[d]id not *rely* on [another expert’s] conclusion as part of his ... methodology” (emphasis in the original)).³ Indeed, that result accords with the well-settled North Carolina law distinguishing between testifying and nontestifying experts and holding that documents and communications concerning the latter are protected from disclosure by doctrines including attorney-client privilege and work product. *Williams v. CSX Transp., Inc.*, 176 N.C. App. 330, 626 S.E.2d 716 (2006). In asking this Court to “reconsider” its Order, the Legislative Defendants are in fact trying to create a backdoor to procure discovery on privileged information, contrary to the North Carolina Rules. *See* N.C. R. Civ. P. 26(b)(4) (“Discovery of facts known and opinions held by experts ... may be obtained *only* as provided by this subdivision.” (emphasis added)).⁴

Like their prior Motion to Compel, the Legislative Defendants’ present Motion relies heavily on the NCLCV Plaintiffs’ use of the word “Optimized.” The NCLCV Plaintiffs, they observe, have termed their maps “Optimized Maps.” Mot. 3, 5. Based on the word “Optimized,” and the assertion that “expert discretion [is] necessarily” involved in drawing redistricting maps, Legislative Defendants appear to contend that Professor Duchin seeks to testify that the Optimized Maps are “optimal,” and that doing so would necessarily render an opinion about the methodology

³ Indeed, the Legislative Defendants’ own preferred example illustrates why the anti-parroting rule does not apply here. They say that this case is just like *James Wilson*, where “the engineer [had to] be disclosed and certified as an expert to the extent the engineer’s judgment calls [were] relevant to the architect’s opinion.” Mot. 5. But here, ***no other*** expert’s “judgment calls” were relevant to Professor Duchin’s “opinion”; she formed her own opinion based on the maps’ objective characteristics.

⁴ To be clear, the NCLCV Plaintiffs would assert relevant protections here, including (*inter alia*) attorney-client privilege, the work-product doctrine, and the protections afforded by Rule 26(b)(4). Because this Court’s December 15 Order addressed only what information is potentially discoverable in the first instance, and because the Legislative Defendants’ Motion for Reconsideration addressed that same subject, the NCLCV Plaintiffs reserve the right to invoke all applicable privileges in the event the Court grants the Motion in any respect.

underlying the maps. Mot. 5. But the Legislative Defendants made that same argument before, *see* Legislative Defendants’ MTC 10, and the Court properly rejected it. Dec. 15 Order 4. The Legislative Defendants show no error in that conclusion. Indeed, Professor Duchin never even *characterized* the NCLCV Plaintiffs’ maps as “Optimized.” Instead, she identified them as “alternative ... plans,” “demonstrative plans,” or the “NCLCV” Plans. Duchin Aff. 3.⁵ And she certainly did not offer any *opinion* that they “achieve[] a ‘Pareto’ optimal standard” or were “optimized according to a sophisticated computer code.” Mot. 5.

The Legislative Defendants also say that the NCLCV Plaintiffs’ Optimized Maps cannot be used as a “point of comparison by which to strike down the enacted plans” without “[u]nderstanding th[e] process” that led to the maps’ creation “and everything behind it.” Mot. 5. But again, the Legislative Defendants made the same argument before (via the “rule of completeness,” *see* Legislative Defendants’ MTC 10). And again, the Legislative Defendants show no error in the Court’s rejection of that argument. Dec. 15 Order 4. The NCLCV Plaintiffs have relied on their Optimized Maps to counter an “impossibility” argument the Legislative Defendants made: that “the political geography and the spread of voters in North Carolina” necessarily yields maps with a “partisan advantage.” Dec. 3 Hr’g Tr. 74: 5–12. The NCLCV Plaintiffs thus relied on their maps to show that the General Assembly *could have* drawn fair maps, consistent with North Carolina’s political geography and traditional districting principles, yet *did not*. Proving that point requires nothing beyond the *maps themselves* and Professor Duchin’s expert conclusion that the Optimized Maps show that it is possible to obtain far more balanced

⁵ The only use of the word “optimized” in Professor Duchin’s report appears in the following passage: “Reock is a different [compactness] measurement of how much a shape differs from a circle: it is computed as the ratio of a region’s area to that of its circumcircle, defined as the smallest circle in which the region can be circumscribed. From this definition, it is clear that it too is optimized at a value of 1, which is achieved only by circles.” Duchin Aff. 5.

outcomes than do the Enacted Plans while respecting traditional districting principles.

In all events, the Legislative Defendants’ recycled arguments are targeted at issues of admissibility and proof that will arise at trial (which is why, again, they cite no case applying the rules they invoke to compel expert discovery). They say, for example, that whether particular redistricting maps “achieve a ‘Pareto’ optimal standard,” or rely on “cutting-edge computational methods,” constitutes “expert opinion” that “could only be reliable and admissible” if offered by qualified experts. Mot. 5. But if Legislative Defendants are indeed pre-litigating the trial in this case, the NCLCV Plaintiffs will save them the trouble. To be very clear: The NCLCV Plaintiffs do not intend to (and do not need to) prove their case at trial by showing that the Optimized Maps are Pareto-optimal, nor by presenting evidence about how the Optimized Maps were produced. Instead, at trial the NCLCV Plaintiffs will prove that the Enacted Plans are extreme partisan gerrymanders. And they will show that, contrary to the Legislative Defendants’ arguments, nothing in North Carolina’s political geography compelled those results—because, as the Optimized Maps illustrate, it is possible to avoid that partisan skew while “simultaneously maintain[ing] or improv[ing] metrics for all of the most important redistricting principles that are operative in North Carolina.” Duchin Aff. 3.

In short: The Court’s December 15 Order got it right, and the Court should reject the Legislative Defendants’ attempts to rehash their meritless arguments.

CONCLUSION

The Legislative Defendants’ Motion for Partial Reconsideration should be denied.

Dated: December 17, 2021

Respectfully submitted,

JENNER & BLOCK LLP

ROBINSON, BRADSHAW & HINSON, P.A.

Sam Hirsch*
Jessica Ring Amunson*
Kali Bracey*
Zachary C. Schauf*
Karthik P. Reddy*
Urja Mittal*
JENNER & BLOCK LLP
1099 New York Avenue NW, Suite 900
Washington, D.C. 20001
(202) 639-6000
shirsch@jenner.com
zschauf@jenner.com

* *Admitted pro hac vice*

/s/Stephen Feldman
Stephen D. Feldman
North Carolina Bar No. 34940
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
(919) 239-2600
sfeldman@robinsonbradshaw.com

Adam K. Doerr
North Carolina Bar No. 37807
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
(704) 377-2536
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
North Carolina Bar No. 50247
ROBINSON, BRADSHAW & HINSON, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
(919) 328-8800
ezimmerman@robinsonbradshaw.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Opposition was served upon each of the parties to this action by electronic mail to counsel at the e-mail addresses indicated below, in accordance with North Carolina Rule of Civil Procedure 5(b)(1)(a):

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraig@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, DC 20002
lmadduri@elias.law
jshelly@elias.law
gwhite@elias.law

Abha Khanna
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
akhanna@elias.law

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
ARNOLD AND PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
stanton.jones@arnoldporter.com
samuel.callahan@arnoldporter.com

*Counsel for Plaintiffs Rebecca Harper,
et al.*

Phillip J. Strach
Thomas A. Farr
John E. Branch III
Alyssa M. Riggins
NELSON MULLINS RILEY & SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
phillip.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
john.branch@nelsonmullins.com
alyssa.riggins@nelsonmullins.com

Mark E. Braden
Katherine McKnight
Richard Raile
BAKER HOSTETLER LLP
1050 Connecticut Avenue NW,
Suite 1100
Washington, DC 20036
mbraden@bakerlaw.com
kmcknight@bakerlaw.com
rraile@bakerlaw.com

*Counsel for Defendants Representative Destin
Hall, Senator Warren Daniel, Senator Ralph E.
Hise, Jr., Senator Paul Newton, Representative
Timothy K. Moore, and Senator Phillip E.
Berger*

Terence Steed
Stephanie Brennan
Amar Majmundar
N.C. DEPARTMENT OF JUSTICE
Post Office Box 629
Raleigh, NC 27502-0629
tsteed@ncdoj.gov
sbrennan@ncdoj.gov
amajmundar@ncdoj.gov

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Jeffrey Loperfido
SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org
jeffloperfido@scsj.org

J. Tom Boer
Olivia T. Molodanof
HOGAN LOVELLS US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
oliviamolodanof@hoganlovells.com

Counsel for Plaintiff Common Cause

*Counsel for Defendants the North Carolina
State Board of Elections, Damon Circosta,
Stella Anderson, Jeff Carmon III, Stacy Eggers
IV, Tommy Tucker, Karen Brinson Bell; and the
State of North Carolina*

This 17th day of December, 2021.

/s/Stephen Feldman
Stephen Feldman

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

SUPERIOR COURT DIVISION

FILE NO. 21 CVS 015426

NORTH CAROLINA LEAGUE, OF
CONSERVATION VOTERS, INC., *et*
al.,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL,
in his official capacity as Chair of the
House Standing Committee on
Redistricting, *et al.*,

Defendants.

FILED
2021 DEC 17 PM 12:39
WAKE CO., C.S.C.
BY _____

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

SUPERIOR COURT DIVISION

FILE NO. 21 CVS 500085

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL,
in his official capacity as Chair of the
House Standing Committee on
Redistricting, *et al.*,

Defendants.

ORDER

THIS MATTER came before the undersigned three-judge panel on the Court's own motion for entry of a scheduling order for the purpose of efficient management of these matters.

On December 13, 2021, this Court entered a Case Scheduling Order. The Order directs the parties to submit to the Court proposed findings of fact and conclusions of law by December 31, 2021. At the same time, each party shall provide a copy of their proposed findings of fact and conclusions of law to all other parties in the consolidated cases in Word format.


Based upon the limited timeframe in which the Court must review the evidence it will receive and make findings of fact and conclusions of law so as to enter a Final Judgment on the merits of all claims asserted by the collective Plaintiffs in these consolidated cases by January 11, 2022, as directed by the Supreme Court of North Carolina, the Court hereby **ORDERS** the following:

After receiving proposed findings of fact and conclusions of law on December 31, 2021, the parties will review the opposing parties' proposed findings and alert the Court as to whether they agree, disagree or take no position as to each finding, in the manner described below

This will be accomplished by changing to green the font of those findings to which they agree and changing the font to yellow of those findings believed to be irrelevant or to which they take no position. To those findings which they disagree the font shall be changed to red. The completed work shall be submitted to the Court by 5:00 PM EST on January 2, 2022.

After presentation of the evidence, parties will indicate their disagreement with findings by changing to red those findings to which they disagree. This shall be submitted to the Court by 5:00 PM EST on January 6, 2022.

SO ORDERED, this the 17 day of December, 2021.



A. Graham Shirley, Superior Court Judge

/s/ Nathaniel J. Poovey

Nathaniel J. Poovey, Superior Court Judge

/s/ Dawn M. Layton

Dawn M. Layton, Superior Court Judge

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

2021 DEC 20 10:41 AM
SUPERIOR COURT DIVISION
21 CVS 15426


NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, INC. et al.,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House Standing
Committee on Redistricting, et al.

Defendants.

WAKE COUNTY S.C.
BY 

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

SUPERIOR COURT DIVISION
21 CVS 500085

REBECCA HARPER. et al.,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Senior Chair of the House
Standing Committee on Redistricting, et al.

Defendants.

**STATE DEFENDANTS'
ANSWER
TO AMENDED COMPLAINT**

**FILED IN
*HARPER v HALL, ET AL.***

NOW COME the Defendants, the North Carolina State Board of Elections, and its members (“State Defendants”), by and through undersigned counsel, and hereby answer Plaintiffs’ Amended Complaint as follows:

INTRODUCTION

1. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions.

2. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions.

3. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions.

4. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument.

5. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument.

6. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegation.

7. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegation.

8. Neither admitted nor denied to the extent that the allegation cites cases that are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions. As to remainder of the allegation, State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegation.

PARTIES

A. Plaintiffs

9. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

10. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

11. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

12. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

13. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

14. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

15. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

16. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

-4-

17. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

18. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

19. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

20. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

21. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

22. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

23. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

24. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

25. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

26. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

27. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

-5-

28. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

29. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

30. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

31. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

32. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

33. State Defendants lack sufficient information to admit or deny the allegations of this paragraph.

B. Defendants

34. Admitted upon information and belief.

35. Admitted upon information and belief.

36. Admitted upon information and belief.

37. Admitted upon information and belief.

38. Admitted.

39. Admitted.

40. Admitted.

41. Admitted.

42. Admitted.

43. Admitted.

-6-

44. Admitted.

45. Admitted.

JURISDICTION AND VENUE

46. Admitted.

47. Admitted.

48. Admitted.

FACTUAL ALLEGATIONS

A. North Carolina voters are divided politically.

49. State Defendants admit that since 2008, Democrats have won three out of four gubernatorial elections, while Republican presidential and U.S. Senate candidates have each won their respective races three out of four times. Due to the vague nature of the remaining allegations in this paragraph, State Defendants are unable to admit or deny them.

50. State Defendants admit, upon information and belief, that in 2020, the Republican nominee for President defeated the Democratic nominee by a margin of 49.9% to 48.6%. State Defendants admit, upon information and belief, that in the 2020 race for governor, the Democratic nominee defeated the Republican nominee by a margin of 51.5% to 47.0%. State Defendants admit, upon information and belief, that in the 2020 race for Attorney General, the Democratic nominee defeated the Republican nominee by a margin of 50.1% to 49.9%. Due to the vague nature of the remaining allegations in this paragraph, State Defendants are unable to admit or deny them.

51. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

-7-

B. National Republican party officials target North Carolina for partisan gerrymandering prior to the 2010 elections.

52. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegation.

53. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegation.

54. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegation.

55. State Defendants admit that Republicans gained control of both the House and Senate for the first time since 1870. State Defendants lack sufficient information and knowledge to admit the remaining allegations.

C. Republican mapmakers create the 2011 congressional and legislative plans from party headquarters with the intent to advantage Republicans and disadvantage Democrats.

56. Admitted on information and belief.

57. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegation.

58. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegation.

59. Neither admitted nor denied to the extent that the case cited is a matter of public

-8-

record, speaks for itself, is the best evidence of its contents, and constitutes legal conclusions. As to the remainder, State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegation.

D. Federal courts strike down the 2011 congressional and legislative plans as illegal racial gerrymanders.

60. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions.

E. The General Assembly illegally gerrymanders the remedial congressional and legislative plans.

61. Admitted upon information and belief.

62. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. State Defendants lack sufficient information to admit or deny the remaining allegations of this paragraph.

63. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegation.

64. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegation.

65. Neither admitted nor denied to the extent that the records cited are matters of

public record, speak for themselves, and are the best evidence of their contents. State

66. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents.

67. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents.

68. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents.

69. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents.

70. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents.

71. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents.

72. Admitted.

73. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents.

74. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegation.

75. To the extent that this paragraph states a legal conclusion, no response is necessary. Otherwise, State Defendants are without sufficient information to admit or deny the allegation.

76. Neither admitted nor denied to the extent that the records cited are matters of

public record, speak for themselves, and are the best evidence of their contents. Otherwise, State defendants are without sufficient information to admit or deny the allegations.

77. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents.

78. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions.

79. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions.

80. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents.

81. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents.

82. Admitted as to the passage of the legislation. As for the remainder, neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents.

83. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegation.

F. Three-judge panels of this Court enjoin the remedial congressional and legislative plans as unlawful partisan gerrymanders.

84. Neither admitted nor denied to the extent that the cases alluded to are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal

conclusions.

85. Because the case referenced is a matter of public record, and the records in the case speak for themselves, no response is required.

86. Neither admitted nor denied to the extent that the case cited is a matter of public record, speaks for itself, is the best evidence of its contents, and constitutes legal conclusions.

87. Neither admitted nor denied to the extent that the case cited is a matter of public record, speaks for itself, is the best evidence of its contents, and constitutes legal conclusions.

88. Neither admitted nor denied to the extent that the case cited is a matter of public record, speaks for itself, and is the best evidence of its contents.

89. Because the case referenced is a matter of public record, and the records in the case speak for themselves, no response is required.

90. Neither admitted nor denied to the extent that the case cited is a matter of public record, speaks for itself, and is the best evidence of its contents.

91. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions.

92. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions.

93. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. This paragraph references legislative actions, the records of which speak for themselves. To the extent that a response is required, State Defendants are without sufficient information to admit or deny the allegations.

94. Neither admitted nor denied to the extent that the case cited is a matter of public record, speaks for itself, and is the best evidence of its contents.

95. Neither admitted nor denied to the extent that the case cited is a matter of public record, speaks for itself, and is the best evidence of its contents.

96. Neither admitted nor denied to the extent that the case cited is a matter of public record, speaks for itself, and is the best evidence of its contents.

G. Legislative Defendants create the 2021 Plans with the goal of entrenching an overwhelming Republican advantage in congressional and legislative seats.

97. To the extent that this paragraph contains argument or conclusory allegations, no response is required. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

98. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents.

99. This paragraph references legislative action, the records for which speak for themselves. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the allegations regarding the legislative action or any other allegations in this paragraph.

100. This paragraph references legislative action, the records for which speak for themselves, and related documents, which speak for themselves. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the allegations regarding the legislative action or the content of the referenced document or any other allegations in this paragraph.

101. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegation, and therefore deny them.

102. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent that a response is required, State Defendants are without sufficient information to admit or deny the allegation.

103. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent that a response is required, State Defendants are without sufficient knowledge to admit or deny the allegations.

104. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the allegations, and therefore deny the allegations.

105. This paragraph references legislative action, which speaks for itself. To the extent that a response is required, State Defendants are without sufficient information to admit or deny the allegations.

106. This paragraph references legislation actions, which speak for themselves. To the extent that a response is required, State Defendants are without sufficient information to admit or deny the allegations.

107. This paragraph references legislative actions, the records of which speak for themselves. To the extent that a response is required, State Defendants are without sufficient information to admit or deny the allegations.

108. This paragraph references records, which speak for themselves. To the extent that a response is required, State Defendants are without sufficient information to admit or deny the allegations.

109. To the extent this allegation constitutes argument and is conclusory, no response is needed. To the extent a response is needed, State Defendants are without sufficient information to admit or deny this allegation.

110. Admitted.

111. Admitted as to the passage of the legislation. As for the remainder, neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents.

112. Admitted as to the passage of the legislation. As for the remainder, neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents.

113. Admitted as to the passage of the legislation. As for the remainder, neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents.

H. The 2021 Congressional plan packs and cracks Democratic voters in every district.

114. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegation.

115. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegation.

116. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegation.

117. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. This paragraph references purported expert opinions, which speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegation.

118. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations of this paragraph and therefore deny them.

Congressional District 1

119. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2016, 2019, and 2021 Congressional Plans, the plans speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

120. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Congressional Plan, those records speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

121. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Congressional Plan and the results of the 2020 presidential election, the plan and those results

speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

Congressional District 2

122. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2016, 2019, and 2021 Congressional Plans, the plans speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

123. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the results of the 2020 presidential election and the 2019 and 2021 Congressional Plans, those results and plans speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

Congressional District 3

124. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Congressional Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

125. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Congressional Plan and the results of the 2020 presidential election, the plan and those results

speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

Congressional District 4

126. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Congressional Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

127. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Congressional Plan and the results of the 2020 presidential election, the plan and those results speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

Congressional District 5

128. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Congressional Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

129. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Congressional Plan and the results of the 2020 presidential election, the plan and those results

speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

Congressional District 6

130. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2016 and 2021 Congressional Plans, the plans speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2016 and 2021 Congressional Plans, or any remaining allegations.

131. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Congressional Plan and the results of the 2020 presidential election, the plan and those results speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the results of the 2020 presidential election, allegations regarding the 2021 Congressional Plan, or any remaining allegations.

Congressional District 7

132. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Congressional Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2021 Congressional Plan, or any remaining allegations.

133. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Congressional Plan and the results of the 2020 presidential election, the plan and those results speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the results of the 2020 presidential election, allegations regarding the 2021 Congressional Plan, or any remaining allegations.

Congressional District 8

134. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Congressional Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2021 Congressional Plan, or any remaining allegations.

135. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Congressional Plan and the results of the 2020 presidential election, the plan and those results speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the results of the 2020 presidential election, allegations regarding the 2021 Congressional Plan, or any remaining allegations.

Congressional District 9

136. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021

Congressional Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2021 Congressional Plan, or any remaining allegations.

137. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2019 and 2021 Congressional Plans and the results of the 2020 presidential election, the plans and those results speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the results of the 2020 presidential election, allegations regarding the 2019 and 2021 Congressional Plans, or any remaining allegations.

Congressional District 10

138. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2016 and 2021 Congressional Plans, the plans speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2016 and 2021 Congressional Plans, or any remaining allegations.

139. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Congressional Plan and the results of the 2020 presidential election, the plan and those results speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the results

of the 2020 presidential election, allegations regarding the 2021 Congressional Plan, or any remaining allegations.

Congressional District 11

140. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2016 and 2021 Congressional Plans, the plans speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2016 and 2021 Congressional Plans, or any remaining allegations.

141. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Congressional Plan and the results of the 2020 presidential election, the plan and those results speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the results of the 2020 presidential election, allegations regarding the 2021 Congressional Plan, or any remaining allegations.

Congressional District 12

142. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Congressional Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2021 Congressional Plan, or any remaining allegations.

143. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Congressional Plan and the results of the 2020 presidential election, the plan and those results speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the results of the 2020 presidential election, allegations regarding the 2021 Congressional Plan, or any remaining allegations.

Congressional District 13

144. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2016 and 2021 Congressional Plans, the plans speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2016 and 2021 Congressional Plans, or any remaining allegations.

145. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Congressional Plan and the results of the 2020 presidential election, the plan and those results speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the results of the 2020 presidential election, allegations regarding the 2021 Congressional Plan, or any remaining allegations.

Congressional District 14

146. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2016 and 2021 Congressional Plans, the plans speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2016 and 2021 Congressional Plans, or any remaining allegations.

147. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Congressional Plan and the results of the 2020 presidential election, the plan and those results speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the results of the 2020 presidential election, allegations regarding the 2021 Congressional Plan, or any remaining allegations.

I. The 2021 Senate and House Plans pack and crack plaintiffs and other democratic voters to dilute their votes.

148. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Senate and House Plans, the plans speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2021 Senate and House Plans, or any remaining allegations.

1. The 2021 Senate Plan packs and cracks Democratic voters.

Granville-Wake Grouping (Senate Districts 13, 14, 15, 16, 17, and 18)

149. This paragraph references a legal conclusion contained in a document which is a matter of public record and which speaks for itself, and therefore, that legal conclusion does not require a response. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Congressional Plan and the 2017 and 2021 Senate Plans, the plans speak for themselves. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2021 Congressional Plan and the 2017 and 2021 Senate Plans, or any remaining allegations.

Guilford-Rockingham Grouping (Senate Districts 26, 27, and 28)

150. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Senate Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2021 Senate Plan, or any remaining allegations.

Iredell-Mecklenburg Grouping (Senate Districts 37 38, 39, 40, 41, and 42)

151. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Senate Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2021 Senate Plan, or any remaining allegations.

Buncombe-McDowell-Burke Grouping (Senate Districts 43, 44, 46, 48, 49)

152. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Senate Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2021 Senate Plan, or any remaining allegations.

Cumberland-Moore Grouping (Senate Districts 19 and 21)

153. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Senate Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2021 Senate Plan, or any remaining allegations.

Forsyth-Stokes Grouping (Senate Districts 31, 32, and 36)

154. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Senate Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2021 Senate and House Plans, or any remaining allegations.

Northeast Grouping (Senate Districts 1 and 2)

155. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 Senate Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2021 Senate and House Plans, or any remaining allegations.

156. State Defendants lack sufficient information to admit or deny the allegations in this paragraph.

2. The 2021 House Plan packs and cracks Democratic voters.

Mecklenburg County (House Districts 88, 92, 98, 99 100, 101, 102, 103, 104, 105, 106, 107, 112)

157. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 House Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2021 Senate and House Plans, or any remaining allegations.

Wake County (House Districts 11, 21, 33, 34, 35, 36, 37, 38, 39, 40, 41, 49)

158. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 House Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2021 Senate and House Plans, or any remaining allegations.

Forsyth-Stokes Grouping (House Districts 71, 72, 74, 75, 91)

159. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 House Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2021 Senate and House Plans, or any remaining allegations.

Guilford County (House Districts 57, 58, 59, 60, 61, 62)

160. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 House Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2021 Senate and House Plans, or any remaining allegations.

Buncombe County (House Districts 114, 115, 116)

161. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 House Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2021 Senate and House Plans, or any remaining allegations.

Pitt County (House Districts 8 and 9)

162. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 House Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2021 Senate and House Plans, or any remaining allegations.

Durham-Person Grouping (House Districts 2, 29, 30, and 31)

163. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 House Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2021 Senate and House Plans, or any remaining allegations.

Duplin-Wayne Grouping (House Districts 4, 10, 14, 15, 16, and 22)

164. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent that this paragraph contains allegations regarding the 2021 House Plan, the plan speaks for itself. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, the allegations about the 2021 Senate and House Plans, or any remaining allegations.

COUNT ONE
Violation of the North Carolina Constitution's
Free Elections Clause, Art. I, § 10

165. State Defendants incorporate their previous responses.

166. State Defendants admit that the North Carolina Constitution speaks for itself concerning its content, and that the U.S. Constitution has no counterpart to the Free Elections Clause.

167. This paragraph references a written documents, which speak for themselves. Therefore, this paragraph does not require a response. To the extent that a response is required, Defendants lack sufficient information to admit or deny the statements in the referenced document or any allegations in this paragraph.

168. This paragraph references written documents, which speak for themselves. Therefore, this paragraph does not require a response. To the extent that a response is required, Defendants lack sufficient information to admit or deny the statements in the referenced document or any allegations in this paragraph.

169. This paragraph contains argument and references legal conclusions in written documents, which speak for themselves. Therefore, this paragraph does not require a response. To the extent that a response is required, Defendants lack sufficient information to admit or deny the

argument, the legal conclusions from the referenced documents, or any allegations in this paragraph.

170. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions.

171. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions.

172. This paragraph contains argument and conclusory allegations about the 2021 Plans, to which no response is required. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions. To the extent that a response is required to the argument, conclusory allegations, and quotations, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, and quotations, or any of the other allegations in this paragraph.

COUNT TWO
Violation of the North Carolina Constitution's
Equal Protection Clause, Art. I, § 19

173. State Defendants incorporate their previous responses.

174. State Defendants admit that the North Carolina Constitution speaks for itself concerning its content.

175. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions.

176. Neither admitted nor denied to the extent that the cases cited are matters of public

record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions.

177. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions.

178. This paragraph contains argument and conclusory allegations about the 2021 Congressional Plan, to which no response is required. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions. To the extent that a response is required to the argument, conclusory allegations, and quotations, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, and quotations, or any of the other allegations in this paragraph.

179. This paragraph contains argument and conclusory allegations about the 2021 Congressional Plan, to which no response is required. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions. To the extent that a response is required to the argument, conclusory allegations, and the quotations, State Defendants lack sufficient information to admit or deny the allegations relaying that argument and quoting the above-noted decision, or any of the other allegations in this paragraph.

COUNT THREE
Violation of the North Carolina Constitution's
Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14

180. State Defendants incorporate their previous responses.

181. State Defendants admit that the North Carolina Constitution speaks for itself

concerning its content.

182. State Defendants admit that the North Carolina Constitution speaks for itself concerning its content.

183. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions.

184. To the extent this paragraph contains argument and conclusory allegations about the 2021 Congressional Plan, no response is required. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions. To the extent that a response is required to the argument, conclusory allegations, and quotations, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, and quotations, or any of the other allegations in this paragraph.

185. To the extent this paragraph contains argument and conclusory allegations about the 2021 Congressional Plan, no response is required. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions. To the extent that a response is required to the argument, conclusory allegations, and quotations, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, and quotations, or any of the other allegations in this paragraph.

186. State Defendants neither admit nor deny this allegation as it is not directed at State Defendants. To the extent that this paragraph contains argument or conclusory allegations, no

-32-

response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

187. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

**ANY AND ALL OTHER ALLEGATIONS MADE IN PLAINTIFFS' COMPLAINT,
INCLUDING THE RELIEF REQUESTED, EXCEPT AS SPECIFICALLY ADMITTED
ABOVE, ARE HEREBY DENIED.**

This the 17th day of December, 2021.

NORTH CAROLINA
DEPARTMENT OF JUSTICE



Mary Carla Babb
Special Deputy Attorney General
N.C. State Bar No. 25713
mcbabb@ncdoj.gov

Terence Steed
Special Deputy Attorney General
N.C. State Bar No. 52809
tsteed@ncdoj.gov

Stephanie Brennan
Special Deputy Attorney General
N.C. State Bar No. 35955
sbrennan@ncdoj.gov

Amar Majmundar
Senior Deputy Attorney General
N.C. State Bar No. 24668
amajmundar@ncdoj.gov

Post Office Box 629
Raleigh, NC 27602
Phone: (919) 716-6900
Fax: (919) 716-6763

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing document in the above titled action upon all parties to this cause by via email and addressed as follows:

ROBINSON, BRADSHAW & HINSON, P.A.

Stephen D. Feldman
434 Fayetteville St.
Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com

Adam K. Doerr
101 North Tryon St.
Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
1450 Raleigh Rd.
Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradhsaw.com

JENNER & BLOCK, LLP
David J. Bradford
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urga Mittal
1099 New York Ave., NW
Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com
Counsel for NCLCV-Plaintiffs

NELSON MULLINS RILEY &

SCARBOROUGH LLP
Phillip J. Strach
Tom Farr
Alyssa Riggins
phil.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
Glenlake One, Suite 200
4140 Parklake Avenue
Raleigh, NC 27612

BAKER HOSTETLER

Mark Braden
Kate McNight
Richard Raile
MBraden@bakerlaw.com
kmcknight@bakerlaw.com
rraile@bakerlaw.com
1050 Connecticut Avenue, NW
Suite 1100
Washington, D.C. 20036

*Counsel for Defendants Philip E. Berger,
Timothy K. Moore, Ralph E. Hise, Jr., Warren
Daniel, Paul Newton, and Destin Hall*

PATTERSON HARKAVY LLP

Burton Craige
Narendra K. Ghosh
Paul E. Smith
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

ARNOLD and PORTER

KAYE SHOLER LLP

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
601 Massachusetts Ave., NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
stanton.jones@arnoldporter.com
sam.callahan@arnoldporter.com

SOUTHERN COALITION
FOR SOCIAL JUSTICE

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Jeffrey Loperfido
1415 W. Highway 54, Suite 101
Durham, NC 27707
919-323-3909
allison@southerncoalition.org
hilaryhklein@scsj.org
Mitchellbrown@scsj.org
Katelin@scsj.org
jeffloperfido@scsj.org

Counsel for Common Cause-Plaintiff

This the 17th day of December, 2021.

ELIAS LAW GROUP LLP

Marc E. Elias
Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
10 G Street, NE, Suite 600
Washington, DC 20002
MElias@elias.law
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

Abha Khanna
1700 Seventh Ave., Suite 2100
Seattle, WA 98101
AKhanna@elias.law

Counsel for Harper-Plaintiffs

HOGAN LOVELLS US LLP

J. Tom Boer
Olivia T. Molodanof
3 Embarcadero Center, Suite 1500
San Francisco, California 94111
415-374-2300
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com

Counsel for Common Cause-Plaintiff



Mary Carla Babb
Special Deputy Attorney General

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, INC. et al.,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House Standing
Committee on Redistricting, et al.

Defendants.

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
2021 DEC 30 10:01 AM
21 CVS 15426

WAKE CO. CLERK
BY 

**STATE DEFENDANTS'
ANSWER
TO COMPLAINT**

**FILED IN
NCLCV v. HALL, ET AL.**

STATE OF NORTH CAROLINA

COUNTY OF WAKE

REBECCA HARPER. et al.,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Senior Chair of the House
Standing Committee on Redistricting, et al.

Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 500085

NOW COME the Defendants, the North Carolina State Board of Elections, and its members (“State Defendants”), by and through undersigned counsel, and hereby answer Plaintiffs’ Amended Complaint as follows:

INTRODUCTION

1. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

2. State Defendants lack sufficient information to admit or deny the allegations.

3. State Defendants lack sufficient information to admit or deny the allegations.

4. State Defendants lack sufficient information to admit or deny the allegations.

5. Neither admitted nor denied as this allegation is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

6. Neither admitted nor denied as this allegation is not directed at State Defendants. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

7. State Defendants lack sufficient information to admit or deny the allegations.

8. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

9. Neither admitted nor denied as this allegation is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or

deny the allegations.

10. Neither admitted nor denied as this allegation is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

PARTIES

A. Plaintiffs

11. State Defendants lack sufficient information to admit or deny the allegations.

12. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

13. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

14. State Defendants lack sufficient information to admit or deny the allegations.

15. State Defendants lack sufficient information to admit or deny the allegations.

16. State Defendants lack sufficient information to admit or deny the allegations.

17. State Defendants lack sufficient information to admit or deny the allegations.

18. State Defendants lack sufficient information to admit or deny the allegations.

19. State Defendants lack sufficient information to admit or deny the allegations.

20. State Defendants lack sufficient information to admit or deny the allegations.

21. State Defendants lack sufficient information to admit or deny the allegations.

-4-

- 22. State Defendants lack sufficient information to admit or deny the allegations.
- 23. State Defendants lack sufficient information to admit or deny the allegations.
- 24. State Defendants lack sufficient information to admit or deny the allegations.
- 25. State Defendants lack sufficient information to admit or deny the allegations.
- 26. State Defendants lack sufficient information to admit or deny the allegations.
- 27. State Defendants lack sufficient information to admit or deny the allegations.
- 28. State Defendants lack sufficient information to admit or deny the allegations.
- 29. State Defendants lack sufficient information to admit or deny the allegations.

B. Defendants

- 30. Admitted upon information and belief.
- 31. Admitted upon information and belief.
- 32. Admitted upon information and belief.
- 33. Admitted upon information and belief.
- 34. Admitted.
- 35. Admitted.
- 36. Admitted.
- 37. Admitted.
- 38. Admitted.
- 39. Admitted.
- 40. Admitted.
- 41. Admitted.
- 42. Admitted.
- 43. Admitted.

JURISDICTION AND VENUE

44. Admitted.

45. Admitted.

46. Admitted.

FACTUAL ALLEGATIONS

I. The Law Governing Redistricting in North Carolina

47. Neither admitted nor denied as the North Carolina Constitution speaks for itself.

48. Neither admitted nor denied as the North Carolina Constitution speaks for itself.

49. Neither admitted nor denied as the North Carolina Constitution speaks for itself.

50. Neither admitted nor denied to the extent that the case cited is a matter of public record, speaks for itself, is the best evidence of its contents, and constitutes a legal conclusion.

51. Neither admitted nor denied as the Voting Rights Act speaks for itself.

52. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions.

II. Partisan Gerrymandering and Racial Discrimination in North Carolina

53. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

54. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions.

-6-

55. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

56. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

57. State Defendants lack sufficient information to admit or deny the allegations.

58. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

59. Neither admitted nor denied as this allegation is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

III. Enactment of the Enacted Plans

A. The 2021 Redistricting Process

60. Admitted.

61. Neither admitted nor denied as this allegation is not directed at State Defendants. To the extent a response is required, admitted upon information and belief.

62. Neither admitted nor denied as this allegation is not directed at State

Defendants. To the extent a response is required, admitted upon information and belief.

63. Neither admitted nor denied as this allegation is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

64. Neither admitted nor denied as this allegation is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

65. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

66. either admitted nor denied as this allegation is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

67. Neither admitted nor denied as this allegation is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

68. Neither admitted nor denied as this allegation is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

69. Neither admitted nor denied as this allegation is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information

to admit or deny the allegations.

70. Neither admitted nor denied as this allegation is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

71. Neither admitted nor denied as this allegation is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

72. Neither admitted nor denied as this allegation is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

73. Neither admitted nor denied as this allegation is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

74. Neither admitted nor denied as this allegation is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

75. Neither admitted nor denied as this allegation is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

76. Neither admitted nor denied as this allegation is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

77. Neither admitted nor denied as this allegation is not directed at State

Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

B. Enactment of the Final Maps

78. Admitted upon information and belief as to the date on which the legislation was passed. Neither admitted nor denied as to the remaining allegations not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny those allegations.

79. Admitted upon information and belief as to the date on which the legislation was passed. Neither admitted nor denied as to the remaining allegations not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny those allegations.

80. Admitted upon information and belief as to the date on which the legislation was passed. Neither admitted nor denied as to the remaining allegations not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny those allegations.

81. Admitted upon information and belief as to the date on which the legislation was passed. Neither admitted nor denied as to the remaining allegations not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or deny those allegations.

IV. Partisan Gerrymandering and Racial Vote Dilution in the Enacted Plans

82. Neither admitted nor denied to the extent that the electoral results cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny

the allegations.

83. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

84. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

85. Neither admitted nor denied as this allegation is not directed at State Defendants and to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

86. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

87. Neither admitted nor denied as this allegation is not directed at State Defendants and to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

A. Extreme Partisan Gerrymandering in the Enacted Plans

88. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

89. Neither admitted nor denied as this allegation is not directed at State Defendants and to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

i. The Enacted Congressional Plan

90. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

91. Neither admitted nor denied to the extent that the electoral outcomes cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

92. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

93. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

94. Neither admitted nor denied to the extent that the allegation states a legal

conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

95. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

96. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

97. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

98. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information

to admit or deny the allegations.

99. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

ii. The Enacted Senate Plan

100. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

101. Neither admitted nor denied to the extent that the electoral outcomes cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

102. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

103. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

104. Neither admitted nor denied to the extent that the allegation states a legal

conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

105. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

106. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

107. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the electoral outcomes cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

108. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information

to admit or deny the allegations.

109. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

110. Neither admitted nor denied as this allegation is not directed at State Defendants and to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

111. Neither admitted nor denied as this allegation is not directed at State Defendants and to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

112. Neither admitted nor denied as this allegation is not directed at State Defendants and to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

113. Neither admitted nor denied as this allegation is not directed at State Defendants and to the extent that the allegation states a legal conclusion to which no response is required.

To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

iii. The Enacted House Plan

114. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

115. Neither admitted nor denied to the extent that the electoral outcomes cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

116. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

117. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

118. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of

their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

119. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

120. Neither admitted nor denied as this allegation is not directed at State Defendants and to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

121. Neither admitted nor denied as this allegation is not directed at State Defendants and to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

122. Neither admitted nor denied as this allegation is not directed at State Defendants and to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

123. Neither admitted nor denied as this allegation is not directed at State Defendants

-18-

and to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

124. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

125. Neither admitted nor denied as this allegation is not directed at State Defendants and to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

iv. Entrenchment of Partisan Advantage in the Enacted Plans.

126. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

127. Neither admitted nor denied to the extent that the electoral outcomes cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny

the allegations.

128. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

129. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

130. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

131. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

B. Racial Vote Dilution in the Enacted Plans

132. Neither admitted nor denied as this allegation is not directed at State

-20-

Defendants and to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

133. Neither admitted nor denied as this allegation is not directed at State Defendants and to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

i. The Enacted Congressional Plan

134. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

135. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

136. Neither admitted nor denied as this allegation is not directed at State Defendants and to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

137. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

138. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

139. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

140. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

ii. The Enacted Senate Plan

141. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information

to admit or deny the allegations.

142. State Defendants lack sufficient information to admit or deny the allegations.

143. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

144. Neither admitted nor denied as this allegation is not directed at State Defendants and to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

145. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

146. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

147. Neither admitted nor denied to the extent that the allegation states a legal

conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

iii. The Enacted House Plan.

148. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

149. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

150. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

151. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

152. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the records cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

153. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

V. Plaintiffs' Optimized Maps

154. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

155. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

156. Neither admitted nor denied as this allegation is not directed at State Defendants and to the extent that the allegation states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

157. Neither admitted nor denied as this allegation is not directed at State Defendants and to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or

deny the allegations.

A. Plaintiffs' Optimized Congressional Map.

158. State Defendants lack sufficient information to admit or deny the allegations.

159. State Defendants lack sufficient information to admit or deny the allegations.

160. State Defendants lack sufficient information to admit or deny the allegations.

161. State Defendants lack sufficient information to admit or deny the allegations.

162. State Defendants lack sufficient information to admit or deny the allegations.

163. State Defendants lack sufficient information to admit or deny the allegations.

164. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

B. Plaintiffs' Optimized Senate Map.

165. State Defendants lack sufficient information to admit or deny the allegations.

166. State Defendants lack sufficient information to admit or deny the allegations.

167. State Defendants lack sufficient information to admit or deny the allegations.

168. State Defendants lack sufficient information to admit or deny the allegations.

169. State Defendants lack sufficient information to admit or deny the allegations.

170. State Defendants lack sufficient information to admit or deny the allegations.

171. State Defendants lack sufficient information to admit or deny the allegations.

172. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

C. Plaintiffs' Optimized House Map.

- 173. State Defendants lack sufficient information to admit or deny the allegations.
- 174. State Defendants lack sufficient information to admit or deny the allegations.
- 175. State Defendants lack sufficient information to admit or deny the allegations.
- 176. State Defendants lack sufficient information to admit or deny the allegations.
- 177. State Defendants lack sufficient information to admit or deny the allegations.
- 178. State Defendants lack sufficient information to admit or deny the allegations.
- 179. State Defendants lack sufficient information to admit or deny the allegations.
- 180. Neither admitted nor denied to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

VI. The Court Can and Should Enter Preliminary Relief Necessary to Preserve the Rights of Millions of North Carolinian Voters.

- 181. Denied.
- 182. Admitted.
- 183. State Defendants lack sufficient information to admit or deny the allegations.
- 184. Admitted that Director Bell made a presentation providing information and recommendations to the General Assembly regarding a variety of election related issues. Neither admitted nor denied as to the remainder of this allegation not directed at State.
- 185. Neither admitted nor denied as this allegation is not directed at State Defendants. To the extent a response is required, admitted that certain municipal elections were delayed from 2021 to 2022.
- 186. Neither admitted nor denied as this allegation is not directed at State Defendants. To the extent a response is required, State Defendants lack sufficient information to admit or

deny the allegations.

187. Neither admitted nor denied as this allegation is not directed at State Defendants and to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

188. Neither admitted nor denied to the extent that this allegation is outdated and similar relief has been granted. Neither admitted nor denied as to the remainder of this allegation as it is not directed at State Defendants and states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the case cited is a matter of public record, speaks for itself, is the best evidence of its contents, and constitutes a legal conclusion. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

189. Neither admitted nor denied to the extent that this allegation is outdated and similar relief has been granted. Neither admitted nor denied as to the remainder of this allegation as it is not directed at State Defendants and states a legal conclusion to which no response is required. Neither admitted nor denied to the extent that the case cited is a matter of public record, speaks for itself, is the best evidence of its contents, and constitutes a legal conclusion. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

190. Neither admitted nor denied to the extent that this allegation is outdated and similar relief has been granted.

191. Neither admitted nor denied to the extent that this allegation appears to generally rely upon prior court rulings, which would be matters of public record, speak for themselves,

-28-

and are the best evidence of their contents.

192. Neither admitted nor denied to the extent this constitutes argument and states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

193. Neither admitted nor denied to the extent that the cases cited are matters of public record, speak for themselves, are the best evidence of their contents, and constitute legal conclusions. Neither admitted nor denied as this allegation is not directed at State Defendants and to the extent that the allegation states a legal conclusion to which no response is required. To the extent a response is required, State Defendants lack sufficient information to admit or deny the allegations.

COUNT I
Unlawful Partisan Gerrymandering in Violation of
the North Carolina State Constitution's Free Elections Clause,
Article I, Section 5

194. State Defendants incorporate their previous responses.

195. State Defendants admit that the North Carolina Constitution speaks for itself concerning its content.

196. This paragraph references legal conclusions in a written document, which speaks for itself. Therefore, this paragraph does not require a response. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the legal conclusions from the referenced document, or any allegations in this paragraph.

197. This paragraph contains references to legal conclusions in a written document, which speaks for itself. Therefore, this paragraph does not require a response. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the legal conclusions from the referenced document, or any allegations in this paragraph.

198. This paragraph contains references to legal conclusions in written documents, which speak for themselves. Therefore, this paragraph does not require a response. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the legal conclusions from the referenced documents or any allegations in this paragraph.

199. This paragraph contains argument and references legal conclusions in written documents, which speak for themselves. Therefore, this paragraph does not require a response. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the argument, the legal conclusions from the referenced documents, or any allegations in this paragraph.

200. This paragraph contains argument and references legal conclusions in written documents, which speak for themselves. Therefore, this paragraph does not require a response. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the argument, the legal conclusions from the referenced documents, or any allegations in this paragraph.

201. This paragraph contains argument and conclusory allegations about the Enacted Plan. Thus, no response is required. To the extent that a response is required to the argument and conclusory allegations, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any of the other allegations in this paragraph.

202. This paragraph contains argument and a conclusory allegation about the Enacted Plan, to which no response is required. To the extent that a response is required to the argument and conclusory allegation, State Defendants lack sufficient information to admit or deny the argument and conclusory allegation.

-30-

203. This paragraph contains argument and conclusory allegations about the Enacted Plan, to which no response is required. To the extent that a response is required to the argument and conclusory allegations, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any of the other allegations in this paragraph.

COUNT II
Unlawful Partisan Gerrymandering in Violation of the North
Carolina State Constitution's Equal Protection Clause,
Article I, Section 19

204. State Defendants incorporate their previous responses.

205. State Defendants admit that the North Carolina Constitution speaks for itself concerning its content.

206. This paragraph contains references to legal conclusions in written documents, which speak for themselves. Therefore, this paragraph does not require a response. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the legal conclusions from the referenced document, or any allegations in this paragraph.

207. This paragraph references to legal conclusions in written documents, which speak for themselves. Therefore, this paragraph does not require a response. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the allegations in this paragraph.

208. This paragraph references legal conclusions in a written document, which speaks for itself. Therefore, this paragraph does not require a response. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the argument, the legal conclusions from the referenced document, or any allegations in this paragraph.

209. This paragraph references legal conclusions in written documents, which speak for themselves. Therefore, this paragraph does not require a response. To the extent that a

-31-

response is required, State Defendants lack sufficient information to admit or deny the legal conclusions or allegations in this paragraph.

210. This paragraph contains argument and conclusory allegations about the Enacted Plan, to which no response is required. To the extent that a response is required to the argument and conclusory allegations, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any other allegations in this paragraph.

211. This paragraph contains argument and conclusory allegations about the Enacted Plan, to which no response is required. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any other allegations.

212. This paragraph contains argument and conclusory allegations about the Enacted Plan, to which no response is required. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any other allegations.

COUNT III
Unlawful Partisan Gerrymandering in Violation of the
North Carolina State Constitution's Free Speech and Free Assembly
Clauses, Article I, Sections 12 and 14

213. State Defendants incorporate their previous responses.

214. State Defendants admit that the North Carolina Constitution speaks for itself concerning its content.

215. State Defendants admit that the North Carolina Constitution speaks for itself concerning its content.

216. This paragraph references legal conclusions in a written document, which speaks for itself. Therefore, this paragraph does not require a response. To the extent that a response is

required, State Defendants lack sufficient information to admit or deny the legal conclusions from the referenced document or any allegations in this paragraph.

217. This paragraph references legal conclusions in a written document, which speaks for itself. Therefore, this paragraph does not require a response. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the legal conclusions from the referenced document or any allegations in this paragraph.

218. This paragraph references legal conclusions in a written document, which speaks for itself. Therefore, this paragraph does not require a response. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the legal conclusions from the referenced document or any allegations in this paragraph.

219. This paragraph contains references to legal conclusions in written documents, which speak for themselves. Therefore, this paragraph does not require a response. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the legal conclusions from the referenced documents or any allegations in this paragraph.

220. This paragraph references legal conclusions in a written document, which speaks for itself. Therefore, this paragraph does not require a response. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the legal conclusions from the referenced document or any allegations in this paragraph.

221. This paragraph contains argument and conclusory allegations about the Enacted Plan, to which no response is required. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any other allegations.

-33-

222. This paragraph contains argument and a conclusory allegation about the Enacted Plan, to which no response is required. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegation, or any other allegations.

223. This paragraph contains argument and conclusory allegations about the Enacted Plan, to which no response is required. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any other allegations.

COUNT IV

Unlawful Racial Vote Dilution in Violation of the North Carolina State Constitution's Free Elections Clause, Article I, Section 5

224. State Defendants incorporate their previous responses.

225. This paragraph references legal conclusions in a written document, which speaks for itself. Therefore, this paragraph does not require a response. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the legal conclusions from the referenced document or any allegations in this paragraph.

226. This paragraph references legal conclusions in a written document, which speaks for itself. Therefore, this paragraph does not require a response. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the legal conclusions from the referenced document or any allegations in this paragraph.

227. This paragraph references legal conclusions in a written document, which speaks for itself. Therefore, this paragraph does not require a response. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the legal conclusions from the referenced document or any allegations in this paragraph.

-34-

228. This paragraph contains argument and references legal conclusions in written documents, which speak for themselves. Therefore, this paragraph does not require a response. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the argument, the legal conclusions from the referenced documents, or any allegations in this paragraph.

229. This paragraph contains argument and conclusory allegations about the Enacted Plan, to which no response is required. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any other allegations.

230. State Defendants lack sufficient information to admit or deny the allegations in this paragraph.

231. This paragraph contains argument and conclusory allegations about the Enacted Plan, to which no response is required. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the argument or conclusory allegations.

232. This paragraph contains argument and conclusory allegations about the Enacted Plan, to which no response is required. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any other allegations.

COUNT V
Unlawful Racial Vote Dilution in Violation of the
North Carolina State Constitution's Equal Protection Clause,
Article I, Section 19

233. State Defendants incorporate their previous responses.

234. State Defendants admit that the North Carolina Constitution speaks for itself concerning its content.

235. This paragraph references legal conclusions in a written document, which speaks for itself. Therefore, this paragraph does not require a response. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the legal conclusions from the referenced document or any allegations in this paragraph.

236. This paragraph references legal conclusions in written documents, which speak for themselves. Therefore, this paragraph does not require a response. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the legal conclusions from the referenced documents or any allegations in this paragraph.

237. This paragraph contains argument and conclusory allegations about the Enacted Plan, to which no response is required. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any other allegations.

238. State Defendants lack sufficient information to admit or deny the allegations in this paragraph.

239. This paragraph contains argument and a conclusory allegation about the Enacted Plan, to which no response is required. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegation, or any other allegations.

240. This paragraph contains argument and a conclusory allegation about the Enacted Plan, to which no response is required. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegation, or any other allegations.

241. This paragraph contains argument and a conclusory allegation about the Enacted Plan, to which no response is required. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegation, or any other allegations.

COUNT VI

Violation of the North Carolina State Constitution's Whole County Provisions, Article II, Sections 3(3) and 5(3), *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*

242. State Defendants incorporate their previous responses.

243. State Defendants admit that the North Carolina Constitution speaks for itself concerning its content.

244. This paragraph references legal conclusions in written documents, which speak for themselves. Therefore, this paragraph does not require a response. To the extent that a response is required, Defendants lack sufficient information to admit or deny the legal conclusions from the referenced document or any allegations in this paragraph.

245. This paragraph contains argument and conclusory allegations about the Enacted Plan, to which no response is required. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any other allegations.

246. This paragraph references legal conclusions in a written document, which speak for itself. Therefore, this paragraph does not require a response. To the extent that a response is required, Defendants lack sufficient information to admit or deny the legal conclusions from the referenced documents or any allegations in this paragraph.

247. This paragraph contains argument and conclusory allegations about the Enacted Plan, to which no response is required. To the extent that a response is required, State

-37-

Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any other allegations.

248. This paragraph contains argument and conclusory allegations about the Enacted Plan, to which no response is required. To the extent that a response is required, State Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any other allegations.

**ANY AND ALL OTHER ALLEGATIONS MADE IN PLAINTIFFS' COMPLAINT,
INCLUDING THE RELIEF REQUESTED, EXCEPT AS SPECIFICALLY ADMITTED
ABOVE, ARE HEREBY DENIED.**

This the 17th day of December, 2021.

NORTH CAROLINA
DEPARTMENT OF JUSTICE



Mary Carla Babb
Special Deputy Attorney General
N.C. State Bar No. 25713
mcbabb@ncdoj.gov

Terence Steed
Special Deputy Attorney General
N.C. State Bar No. 52809
tsteed@ncdoj.gov

Stephanie Brennan
Special Deputy Attorney General
N.C. State Bar No. 35955
sbrennan@ncdoj.gov

Amar Majmundar
Senior Deputy Attorney General
N.C. State Bar No. 24668
amajmundar@ncdoj.gov

Post Office Box 629
Raleigh, NC 27602
Phone: (919) 716-6900
Fax: (919) 716-6763

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing document in the above titled action upon all parties to this cause by via email and addressed as follows:

ROBINSON, BRADSHAW & HINSON, P.A.
Stephen D. Feldman
434 Fayetteville St.
Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com

Adam K. Doerr
101 North Tryon St.
Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
1450 Raleigh Rd.
Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradhsaw.com

JENNER & BLOCK, LLP
David J. Bradford
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urga Mittal
1099 New York Ave., NW
Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com
Counsel for NCLCV-Plaintiffs

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach
Tom Farr
Alyssa Riggins
phil.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
Glenlake One, Suite 200
4140 Parklake Avenue
Raleigh, NC 27612

BAKER HOSTETLER
Mark Braden
Kate McNight
Richard Raile
MBraden@bakerlaw.com
kmcknight@bakerlaw.com
rraile@bakerlaw.com
1050 Connecticut Avenue, NW
Suite 1100
Washington, D.C. 20036

*Counsel for Defendants Philip E. Berger,
Timothy K. Moore, Ralph E. Hise, Jr., Warren
Daniel, Paul Newton, and Destin Hall*

PATTERSON HARKAVY LLP

Burton Craige
Narendra K. Ghosh
Paul E. Smith
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

ARNOLD and PORTER

KAYE SHOLER LLP

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
601 Massachusetts Ave., NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
stanton.jones@arnoldporter.com
sam.callahan@arnoldporter.com

SOUTHERN COALITION
FOR SOCIAL JUSTICE

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Jeffrey Loperfido
1415 W. Highway 54, Suite 101
Durham, NC 27707
919-323-3909
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
Katelin@scsj.org
jeffloperfido@scsj.org

Counsel for Common Cause-Plaintiff

This the 17th day of December, 2021.

ELIAS LAW GROUP LLP

Marc E. Elias
Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
10 G Street, NE, Suite 600
Washington, DC 20002
MElias@elias.law
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

Abha Khanna
1700 Seventh Ave., Suite 2100
Seattle, WA 98101
AKhanna@elias.law

Counsel for Harper-Plaintiffs

HOGAN LOVELLS US LLP

J. Tom Boer
Olivia T. Molodanof
3 Embarcadero Center, Suite 1500
San Francisco, California 94111
415-374-2300
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com

Counsel for Common Cause-Plaintiff



Mary Carla Babb
Special Deputy Attorney General

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA LEAGUE, OF
CONSERVATION VOTERS, INC., *et al.*,
Plaintiffs

and

COMMON CAUSE,
Plaintiff-Intervenor,

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, *et*
al.,
Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426

FILED

2021 DEC 20 AM 10:58

WAKE CO., C.S.C.

RY

STATE OF NORTH CAROLINA

COUNTY OF WAKE

REBECCA HARPER, *et al.*,
Plaintiffs

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, *et*
al.,
Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 500085

**ORDER GRANTING IN PART LEGISLATIVE DEFENDANTS' MOTION FOR
PARTIAL RECONSIDERATION AND ORDER CLARIFYING CASE SCHEDULING
ORDER**

THIS MATTER came before the undersigned three-judge panel upon Legislative Defendants' motion for partial reconsideration of this Court's Order on Legislative Defendants' Motion to Compel, dated December 15, 2021.

Procedural and Factual Background

In this litigation, Plaintiffs seek a declaration that the Congressional, North Carolina Senate, and North Carolina House of Representatives districts established by an act of the General Assembly in 2021, N.C. Sess. Laws 2021-174 (Senate Bill 750), 2021-173 (Senate Bill 739), and 2021-175 (House Bill 976), violate the rights of Plaintiffs under the North Carolina Constitution. Plaintiffs seek to enjoin the future use of the 2021 congressional and state legislative districts.

On December 8, 2021, after receiving an order from the Supreme Court of North Carolina directing this Court to resolve all Plaintiffs' claims on the merits by January 11, 2022, this Court requested that all parties submit proposed scheduling orders by December 10, 2021.

On December 13, 2021, this Court entered a Case Scheduling Order giving the parties until December 23, 2021, to exchange evidence, including expert witness reports. Paragraph 4 of the Case Scheduling Order further provided that "[e]xpert reports produced to an opposing party shall be accompanied by all source code, source data, input parameters, and all outputted data." On December 14, 2021, Legislative Defendants filed a motion to compel both Harper Plaintiffs and NCLCV Plaintiffs (collectively "Plaintiffs") to produce source code, source data, input parameters, and outputted data pertaining to the expert reports produced during the preliminary-injunction phase of this litigation.

On December 15, 2021, at the Court's direction, Plaintiffs submitted written responses stating their position on the Motion to Compel. NCLCV Plaintiffs contended that Legislative Defendants' motion was premature and requested the production of documents that "were not provided to, were never in the possession of, and were not considered by" their expert, Professor Moon Duchin and therefore not subject to production pursuant to Rule 26(b)(4) of the North Carolina Rules of Civil Procedure. Harper Plaintiffs additionally submitted a

Motion for Protective Order with their response to Legislative Defendants' Motion to Compel. Also on December 15, 2021, full consideration being given to the motion, the Court, in its discretion, entered an order granting in part Legislative Defendants' motion to compel.

Within its December 15, 2021, Order, the Court also decreed that NCLCV Plaintiffs would not be required to produce any documents or information that NCLCV Plaintiffs' expert, Professor Moon Duchin, did not consider or receive. Legislative Defendants thereafter filed the present Motion for Partial Reconsideration of this aspect of the Court's December 15, 2021 Order. Legislative Defendants contend that the Court's order would "shield most or all discovery" concerning the NCLCV Plaintiffs' "Optimized Maps." To the extent this is true, the Court now clarifies its prior ruling. NCLCV Plaintiffs submitted a written response to the motion on December 16, 2021.

As an initial matter, the Court notes that there is "no mention of a 'motion to reconsider' in the North Carolina Rules of Civil Procedure." *See Doe v. City of Charlotte*, 273 N.C. App. 10, 16 (2020). As such, the Court will treat this motion as a motion to revise made pursuant to N.C.G.S. § 1A-1, Rule 54(b) of the North Carolina Rules of Civil Procedure.

At issue in the Motion for Partial Reconsideration is all source code, source data, input parameters, and all outputted data associated with the Optimized Maps that were presented to the Court in the Complaint. In fact, the Optimized Maps are referenced over ninety (90) times by the NCLCV Plaintiffs in their Complaint. The Optimized Maps were filed as Exhibits in this case for the Court to consider through the Affidavit of Stephen D. Feldman in order that they could be considered in ruling on the NCLCV's Plaintiffs' Motion for Preliminary Injunction. The Optimized Maps were filed separate from and independent of the Affidavit Professor Duchin. At the hearing on the Motion for Preliminary Injunction the NCLCV Plaintiffs mentioned the Optimized Maps on numerous occasions and provided the Court with copies of the same. Perhaps most importantly, NCLCV Plaintiffs, in both their

Complaint and at the hearing on the Motion for Preliminary Injunction, requested that in the event Legislative Defendants are required to draw remedial maps and fail to do so to the satisfaction of the Court, that the Court require the use of the Optimized Maps for the 2022 Elections. While it is true that the information at issue could not be discovered through the expert discovery of Professor Duchin, as she neither received nor relied upon such information in forming her opinions, the information is relevant and subject to discovery as NCLCV Plaintiffs have put the issue of the Optimized Maps before the Court.

After considering Legislative Defendants' motion for partial reconsideration and NCLCV Plaintiffs' written response, as well as the matters contained therein, the Court, in its discretion, rules upon Legislative Defendants' motion as follows: NCLCV Plaintiffs shall produce to the Legislative Defendants the method and means by which the Optimized Maps were formulated and produced, including, but not limited to all source code, source data, input parameters, and all outputted data associated with the Optimized Maps. NCLCV Plaintiffs shall further identify any and all persons who took part in drawing or participated in the computerized production of the Optimized Maps. All such information shall be produced to Legislative Defendants by 5:00 PM EST December 23, 2021.

SO ORDERED, this the 20 day of December, 2021.


A. Graham Shirley, Superior Court Judge

/s/ Nathaniel J. Poovey

Nathaniel J. Poovey, Superior Court Judge

/s/ Dawn M. Layton

Dawn M. Layton, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission addressed as follows:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Harper Plaintiffs

Stephen D. Feldman
Adam K. Doerr
Erik R. Zimmerman
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
adoerr@robinsonbradshaw.com
ezimmerman@robinsonbradshaw.com
Counsel for NCLCV Plaintiffs

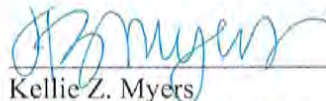
Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Jeffrey Loperfido
SOUTHERN COALITION FOR
SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org
jeffloperfido@scsj.org
Counsel for Common Cause Plaintiff-Intervenor

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
NELSON MULLINS RILEY &
SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Phillip.strach@nelsonmullins.com
Tom.farr@nelsonmullins.com
Alyssa.riggins@nelsonmullins.com
Counsel for Legislative Defendants

Terence Steed
Amar Majmundar
Stephanie A. Brennan
NORTH CAROLINA DEPARTMENT
OF JUSTICE
Post Office Box 629
Raleigh, NC 27602
tsteed@ncdoj.gov
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
Counsel for State Board Defendants

Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 20th day of December 2021.


Kellie Z. Myers
Trial Court Administrator
10th Judicial District
Kellie.Z.Myers@nccourts.org

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

REBECCA HARPER, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

21 CVS 015426

21 CVS 500085

**MOTION FOR PROTECTIVE
ORDER QUASHING
NOTICES OF DEPOSITION OF
PRESIDENT *PRO TEMPORE*
PHILIP E. BERGER, SENATOR
WARREN DANIEL, SENATOR
PAUL NEWTON AND SPEAKER
TIMOTHY K. MOORE**

NOW COMES President *Pro Tempore* Philip E. Berger, Senator Warren Daniel, Senator Paul Newton, and Speaker Timothy K. Moore (collectively, “Movants”), by and through undersigned counsel and pursuant to Rules 7(b) and 26(c) of the North Carolina Rules of Civil Procedure, and hereby move this Court for a Protective Order providing that the depositions sought by Plaintiffs’ Notices of Depositions (attached hereto as Exhibit 1) in the above captioned action not be had on the grounds that (1) each of the Movants is entitled to legislative immunity, and (2) the willingness of non-moving Legislative Defendants to submit to depositions renders depositions

of Movants unnecessary. These two bases constitute good cause under Rule 26(c) for a Protective Order quashing Plaintiffs’ Notices of Deposition as to Movants. In support of their motion, Movants show the Court as follows:

1. As described by the U.S. Court of Appeals for the Fourth Circuit, “[l]egislative immunity’s practical import is difficult to overstate.” *E.E.O.C V. Washington Suburban Sanitary Com’n*, 631 F.3d 174, 181 (4th Cir. 2011). It “provides legislators with the breathing room necessary to make [many of our toughest decisions] in the public’s interest.” *Id.* “It allows them to focus on their public duties by removing the costs and distractions attending lawsuits. It shields them from political wars of attrition in which their opponents try to defeat them through litigation rather than at the ballot box.” *Id.* “Legislative immunity thus reinforces representative democracy, fostering public decision making by public servants for the right reasons.” *Id.*

2. Plaintiffs’ Notices of Deposition to Movants directly undercut these goals. Their lawsuits endeavor to employ litigation for political gain by overturning redistricting plans created through a process that was the most transparent redistricting process in North Carolina history, by a General Assembly elected shortly before the redistricting process challenged here, under maps expressly held constitutional by this State’s courts less than two years prior. In other words, political opponents seek to defeat Movants through litigation after being unable to do so through the ballot box. Plaintiffs’ Notices of Deposition divert Movants’ attention away from their public duties and violate the well-established and well-settled doctrine of legislative immunity. Accordingly, Movants respectfully ask this Court to acknowledge Movants’ assertion of legislative immunity and enter a Protective Order quashing the notices of deposition to President *Pro Tempore* Berger, Senator Daniel, Senator Newton, and Speaker Moore.

3. Prior to filing this motion, counsel for Legislative Defendants and counsel for Plaintiffs conferred on this matter via emails attached hereto as Exhibit 2. Counsel for *Harper* Plaintiffs took the position that Legislative Defendants could not introduce evidence from any witness, including Representative Hall or Senator Hise, who has agreed to waive legislative privilege “that otherwise seeks to explain the General Assembly’s intent in drawing the challenged district plans, unless such testimony or evidence is based exclusively on the public legislative record or publicly available data.” *See* Ex. 2 p. 4, purporting to quote a 7/17/19 Order in *Common Cause v. Lewis*.¹ As shown in Exhibit 3, *Harper* Plaintiffs’ interpretation of the 7/17/19 Order broadens it significantly from the actual holding, where the Court did, in fact, not impose a blanket limitation on testimony that would shed light on the intent behind the districts, but instead, imposed limitations as to the communications with legislators and staff members who had asserted legislative privilege. *See* Ex. 3 p. 5. Counsel for Legislative Defendants clarified this position, and further clarified that Senator Hise and Representative Hall would not “be using the privilege as a sword in any way” on December 21, 2021. Counsel for Legislative Defendants again asked that the notices of deposition for the Legislators asserting immunity be withdrawn in an effort to avoid motions practice. *See* Ex. 2 p. 3. Counsel for *Harper* Plaintiffs responded that they did not intend to withdraw the notices but opined that the “proper course would be for [Movants] to serve a formal objection on the basis of legislative privilege.” *See* Ex. 2 pp. 2-3. Given that the North Carolina Rules of Civil Procedure do not contain a procedure for such objections to deposition notices to named parties, counsel for Legislative Defendants sought clarification on *Harper* Plaintiffs’ position. *See* Ex. 2 pp. 1-2. At 10:27 a.m. today, counsel for *Harper* Plaintiffs advised

¹ This order was actually entered on July 16, 2019 and served on July 17, 2019. A copy of the order is attached hereto as Exhibit 3.

counsel for Legislative Defendants that they would need to seek a protective order. *See* Ex. 2, p. 1.

4. “Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the judge of the court in which the action is pending may make any order which justice requires to protect a party or person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (i) that the discovery not be had...” N.C. Gen. Stat § 1A-1, Rule 26(c) (2021).

5. Protective Orders issued under Rule 26(c) are “discretionary” and “reviewable only for abuse of discretion.” *Williams v. State Farm Mut. Auto. Ins. Co.*, 67 N.C. App. 271, 273, 312 S.E.2d 905, 907 (1984) (citing *Booker v. Everhart*, 33 N.C. App. 1, 9, 234 S.E.2d 46, 53 (1977), *rev’d on other grounds*, 294 N.C. 146, 240 S.E.2d 360 (1978)).

6. Under well-settled North Carolina law, “[i]ndividuals . . . are entitled to absolute legislative immunity for all actions taken in the sphere of legitimate legislative activity.” *Northfield Dev. Co. v. City of Burlington*, 136 N.C. App. 272, 281, 523 S.E.2d 743, 749, *aff’d in part, review dismissed in part on other grounds*, 352 N.C. 671, 535 S.E.2d 32 (2000) (internal quotations removed) (quoting *Bogan v. Scott-Harris*, 523 U.S. 44, 54, 118 S. Ct. 966, 972, 140 L.Ed.2d 79, 88 (1998)).

7. This common law doctrine of legislative immunity has been incorporated into North Carolina statutory law as well: “The members shall have freedom of speech and debate in the General Assembly, and shall not be liable to impeachment or question, in any court or place out of the General Assembly, for words therein spoken.” N.C. Gen. Stat § 120-9 (2021).

8. To invoke legislative immunity, a legislator must show “(1) that they were acting in a legislative capacity at the time of the alleged incident; and (2) that their acts were not illegal acts.” *Vereen v. Holden*, 121 N.C. App. 779, 782, 468 S.E.2d 471, 473 (1996), *review allowed and remanded*, 345 N.C. 646, 483 S.E.2d 719 (1997); *see also Gravel v. United States*, 408 U.S. 606, 625 (1972) (describing a legislative act as an act that (1) is “an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings,” and (2) relates “to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.”).

9. Legislative immunity is “personal” and “may be waived or asserted by each individual legislator.” *See Marylanders for Fair Representation, Inc. v. Schaefer*, 144 F.R.D. 292, 298 (D. Md. 1992). *See also Northfield Dev. Co.* at 282, 523 S.E.2d at 749 (noting that the immunity applies to “individuals”).

10. Once asserted, legislative immunity “shield[s] the individual from the consequences of the litigation results and provide[s] a testimonial privilege.” *Northfield Dev. Co.* at 282, 523 S.E.2d at 749 (citations omitted); *see also Novack v. City of High Point*, 159 N.C. App. 229, 582 S.E.2d 726 (2003) (unpublished) (available at 2003 WL 21649352 at *6); *Royal Oak Concerned Citizens Assoc. v. Brunswick Cty.*, 233 N.C. App. 143, 149, 756 S.E.2d 833, 836 (2014).

11. Although legislative immunity can be waived, it can only be waived by “explicit and unequivocal renunciation of the protection.” *Northfield Dev. Co.* at 282, 523 S.E.2d at 749-50 (internal quotations omitted).

12. North Carolina courts analyzing issues involving legislative immunity generally follow federal case law on legislative immunity, which exhibits robust deference to legislative immunity. *See, e.g., Northfield Dev. Co.* at 281, 523 S.E.2d at 749 (citing *Bogan v. Scott-Harris*, 523 U.S. 44 (1998)); *Vereen* at 782, 468 S.E.2d at 473 (citing *Tenney v. Brandhove*, 341 U.S. 367 (1951) and *Lake Country Estates v. Tahoe Planning Agcy.*, 440 U.S. 391 (1979)).

13. For example, the Fourth Circuit has held that where “the suit would require legislators to testify regarding conduct in their legislative capacity, the doctrine of legislative immunity has full force.” *Schlitz v. Commonwealth of Virginia*, 854 F.2d 43, 45 (4th Cir. 1988), *overruled on other grounds by, Berkley v. Common Council of City of Charleston*, 63 F.3d 295 (4th Cir. 1995).

14. The United States Supreme Court has recognized the right of state legislators “to be free from arrest or civil process for what they do or say in legislative proceedings.” *Tenney v. Brandhove*, 341 U.S. 367, 372 (1951); *see also Village of Arlington Heights v. Metropolitan Housing Department Corp.*, 429 U.S. 252, 268 n.18 (1977) (quoting *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 420 (1971)) (emphasis added) (acknowledging that the Court “has recognized ever since [] 1810, that judicial inquiries into legislative or executive motivation represent a substantial intrusion into the workings of other branches of government. Placing a decisionmaker on the state is therefore ‘usually to be avoided.’”).

15. The Supreme Court has held that legislative immunity is to be applied “broadly to effectuate its purposes” in order to “protect the integrity of the legislative process by insuring the independence of individual legislators” and “reinforc[e] the separation of powers so deliberately

established by the Founders.” *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 501, 502 (1975) (citations omitted).

16. Federal courts have shown strong deference to assertions of legislative privilege in the context of redistricting cases too. For example, in *Marylanders*, a case involving a challenge to Maryland’s redistricting maps following the 1990 census, the court rejected the challengers’ contention that inquiry into legislative motive justified an abrogation of legislative immunity:

Plaintiffs cannot, however, inquiry into legislative motive if such an inquiry would necessitate an abrogation of legislative immunity. Contrary to plaintiff’s assertions, the immunity enjoyed by state legislators is *absolute*. . . . Thus, legislative immunity, if found, *would* bar inquiry into legislative motive regarding alleged Section 2 violations, just as it would prohibit certain discovery regarding plaintiffs’ other claims.

144 F.R.D. at 297 n.12 (citations omitted, emphasis in original); *see also Florida v. United States*, 886 F. Supp. 2d 1301, 1304 (N.D. Fla. 2012) (protecting state legislators from testifying about the “reasons for their votes” in a case alleging Section 5 violations); *Backus v. South Carolina*, Case No. 3:11-cv-03120-HFF-PMD, Order (D.S.C. Feb. 8, 2012) (quashing notice of deposition as to “any questions concerning communications or deliberations involving legislators or their agents regarding their motives in enacting legislation”).

17. Plaintiffs’ complaints concern core legislative acts: the deliberative and communicative aspects of the North Carolina General Assembly’s drafting, negotiating, debating, and voting upon the 2021 redistricting plans for the North Carolina Senate and House of Representatives as well as the state’s Congressional delegation. Any testimony elicited from Movants that would be remotely relevant to Plaintiffs’ claims necessarily would concern conduct that is fundamentally at the core of the “sphere of legitimate legislative activity” that triggers legislative immunity. *See Northfield Dev. Co.* at 281, 523 S.E.2d at 749.

18. Movants have taken no action to waive that protection, and certainly nothing constituting an “explicit and unequivocal renunciation” of the immunity. *See Northfield Dev. Co.* at 282, 523 S.E.2d at 749-50.

19. Movants’ assertion of legislative immunity, therefore, constitutes an absolute shield against efforts to “question [them] in any court,” or obligate them to provide testimony in judicial proceedings reviewing the process or its consequences. *See Northfield Dev. Co.* at 282, 523 S.E.2d at 749; N.C. Gen. Stat § 120-9.

20. Accordingly, Movants’ invocation of legislative immunity constitutes “good cause” under Rule 26(c) to warrant a Protective Order quashing Notices of Deposition directed to Movants.

21. Moreover, testimony from Movants simply is not needed in this matter. Two of the six legislators – both with direct knowledge of the 2021 redistricting process - named in their official capacities as defendants in Plaintiffs’ lawsuits, have agreed to waive their personal legislative immunity. As such, Plaintiffs should be able to obtain all of the testimony and evidence they need with respect to the legislative process at issue from depositions of these remaining legislative defendants.

22. *Marylanders for Fair Representation* provides an example in which a Court did not compel testimony by legislators given the availability of non-legislators to testify with respect to the same matters. In that case, the challenged redistricting plans were drawn by a five-member committee appointed by the governor that included two state legislators and three non-legislators. 144 F.R.D. at 295-96. Plaintiffs noticed depositions of all five commission members. *Id.* at 296. All members of the commission asserted legislative immunity on the grounds that the redistricting

process is inherently legislative, even when components of that process are handled within the executive branch by individuals serving under gubernatorial appointments. *Id.* A two-judge majority of the panel resolved the issue by allowing depositions of the non-legislator members of the commission and deferring a final decision on legislative immunity as to the legislator members until a time when the factual record was more developed. *Id.* at 304-05. In doing so, the court avoided a “direct[] impact[] upon legislative sovereignty” by allowing litigants access to evidence only available from non-legislators while respecting legislative immunity for commission members who were actual, elected legislators. *Id.* at 305.

23. Although numerous grounds distinguish *Marylanders* from the present matter, its resolution of a question of legislative immunity resonates here. To be clear, Movants stand on far firmer footing to assert legislative immunity than did the legislators in *Marylanders* as Movants’ assertions of legislative immunity pertain to conduct as elected legislators within the legislature and acting within the legislative process, not as appointed commissioners on an executive branch commission. Nevertheless, Plaintiffs’ argument for allowing depositions of Movants loses all force given the willingness of other legislators to submit to depositions. Plaintiffs will be able to elicit testimony about the legislative process from Senator Hise and Representative Hall thus obviating any need for testimony from Senators Berger, Senator Warren Daniel, Senator Paul Newton, or Speaker Moore.

24. Accordingly, in addition to Movants’ assertion of legislative immunity, Plaintiffs’ ability to elicit the evidence sought from Movants elsewhere constitutes “good cause” under Rule 26(c) to warrant a Protective Order quashing Notices of Deposition directed to Movants.

WHEREFORE, for the reason set forth above, the Movants respectfully pray that the Court enter a Protective Order quashing the Notices of Deposition served on President *Pro Tempore* Berger, Senator Daniel, Senator Newton, and Speaker Moore.

Respectfully submitted, this the 22nd day of December, 2021.

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP

Phillip J. Strach (NC Bar No. 29456)

phillip.strach@nelsonmullins.com

Thomas A. Farr (NC Bar No. 10871)

tom.farr@nelsonmullins.com

Alyssa M. Riggins (NC Bar No. 52366)

alyssa.riggins@nelsonmullins.com

4140 Parklake Avenue, Suite 200

Raleigh, NC 27612

Telephone: (919) 329-3800

BAKER HOSTETLER LLP

Mark E. Braden* (DC Bar No. 419915)

MBraden@bakerlaw.com

Katherine McKnight* (VA Bar No. 81482)

kmcknight@bakerlaw.com

1050 Connecticut Ave NW, Suite 1100 Washington DC

20036

* Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

It is hereby certified that on this the 22nd day of December, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com
Counsel for Plaintiffs North Carolina League of Conservation Voters, et al.

Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
Counsel for the North Carolina State Board of Elections; Damon Circosta, Stella Anderson, Jeff Carmon III, Stacy Eggers IV, and Tommy Tucker, in their official capacities with the State Board of Elections

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
Counsel for Plaintiffs North Carolina League of Conservation Voters, et al.

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
Mitchellbrown@scsj.org
Katelin@scsj.org

J. Tom Boer
Olivia T. Molodanof
Hogan Lovells US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com
Counsel for Intervenor Common Cause

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com

Exhibit 1

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 21 CVS 015426
No. 21 CVS 500085

NORTH CAROLINA LEAGUE OF CONSERVATION
VOTERS, INC., *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

***HARPER* PLAINTIFFS’
NOTICE OF DEPOSITION
OF SENATOR
PHILIP E. BERGER**

PLEASE TAKE NOTICE that on December 29, 2021, beginning at 1:00 p.m., Plaintiffs in *Harper v. Hall*, No. 21 CVS 50085, will take the deposition of Senator Philip E. Berger by videoconference, upon oral examination, pursuant to Rules 26 and 30 of the North Carolina Rules of Civil Procedure before a Notary Public or some other person duly authorized by law to take depositions. The examination shall continue from day to day until completed. All counsel are invited to attend and cross-examine as provided by law.

Respectfully submitted, this the 14th day of December, 2021.

By: /s/ Burton Craige

PATTERSON HARKAVY LLP

Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Harper Plaintiffs

ELIAS LAW GROUP LLP

Lalitha D. Madduri*
Jacob D. Shelly*
Graham W. White
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

Abha Khanna*
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
AKhanna@elias.law

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

Elisabeth S. Theodore
R. Stanton Jones*
Samuel F. Callahan
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
elisabeth.theodore@arnoldporter.com

Counsel for Harper Plaintiffs
**Pro hac vice motion pending*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to counsel for all other parties.

This the 14th day of December, 2021.

/s/ Samuel F. Callahan

Samuel F. Callahan

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 21 CVS 015426
No. 21 CVS 500085

NORTH CAROLINA LEAGUE OF CONSERVATION
VOTERS, INC., *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

***HARPER* PLAINTIFFS'
NOTICE OF DEPOSITION
OF SENATOR
WARREN DANIEL**

PLEASE TAKE NOTICE that on December 27, 2021, beginning at 1:00 p.m., Plaintiffs in *Harper v. Hall*, No. 21 CVS 50085, will take the deposition of Senator Warren Daniel by videoconference, upon oral examination, pursuant to Rules 26 and 30 of the North Carolina Rules of Civil Procedure before a Notary Public or some other person duly authorized by law to take depositions. The examination shall continue from day to day until completed. All counsel are invited to attend and cross-examine as provided by law.

Respectfully submitted, this the 14th day of December, 2021.

By: /s/ Burton Craige

PATTERSON HARKAVY LLP

Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Harper Plaintiffs

ELIAS LAW GROUP LLP

Lalitha D. Madduri*
Jacob D. Shelly*
Graham W. White
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

Abha Khanna*
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
AKhanna@elias.law

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

Elisabeth S. Theodore
R. Stanton Jones*
Samuel F. Callahan
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
elisabeth.theodore@arnoldporter.com

Counsel for Harper Plaintiffs
**Pro hac vice motion pending*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to counsel for all other parties.

This the 14th day of December, 2021.

/s/ Samuel F. Callahan

Samuel F. Callahan

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 21 CVS 015426
No. 21 CVS 500085

NORTH CAROLINA LEAGUE OF CONSERVATION
VOTERS, INC., *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

***HARPER* PLAINTIFFS’
NOTICE OF DEPOSITION
OF REPRESENTATIVE
TIMOTHY K. MOORE**

PLEASE TAKE NOTICE that on December 29, 2021, beginning at 9:00 a.m., Plaintiffs in *Harper v. Hall*, No. 21 CVS 50085, will take the deposition of Representative Timothy K. Moore by videoconference, upon oral examination, pursuant to Rules 26 and 30 of the North Carolina Rules of Civil Procedure before a Notary Public or some other person duly authorized by law to take depositions. The examination shall continue from day to day until completed. All counsel are invited to attend and cross-examine as provided by law.

Respectfully submitted, this the 14th day of December, 2021.

By: /s/ Burton Craige

PATTERSON HARKAVY LLP

Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Harper Plaintiffs

ELIAS LAW GROUP LLP

Lalitha D. Madduri*
Jacob D. Shelly*
Graham W. White
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

Abha Khanna*
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
AKhanna@elias.law

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

Elisabeth S. Theodore
R. Stanton Jones*
Samuel F. Callahan
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
elisabeth.theodore@arnoldporter.com

Counsel for Harper Plaintiffs
**Pro hac vice motion pending*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to counsel for all other parties.

This the 14th day of December, 2021.

/s/ Samuel F. Callahan

Samuel F. Callahan

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 21 CVS 015426
No. 21 CVS 500085

NORTH CAROLINA LEAGUE OF CONSERVATION
VOTERS, INC., *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

***HARPER* PLAINTIFFS’
NOTICE OF DEPOSITION
OF SENATOR
PAUL NEWTON**

PLEASE TAKE NOTICE that on December 28, 2021, beginning at 1:00 p.m., Plaintiffs in *Harper v. Hall*, No. 21 CVS 50085, will take the deposition of Senator Paul Newton by videoconference, upon oral examination, pursuant to Rules 26 and 30 of the North Carolina Rules of Civil Procedure before a Notary Public or some other person duly authorized by law to take depositions. The examination shall continue from day to day until completed. All counsel are invited to attend and cross-examine as provided by law.

Respectfully submitted, this the 14th day of December, 2021.

By: /s/ Burton Craige

PATTERSON HARKAVY LLP

Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Harper Plaintiffs

ELIAS LAW GROUP LLP

Lalitha D. Madduri*
Jacob D. Shelly*
Graham W. White
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

Abha Khanna*
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
AKhanna@elias.law

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

Elisabeth S. Theodore
R. Stanton Jones*
Samuel F. Callahan
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
elisabeth.theodore@arnoldporter.com

Counsel for Harper Plaintiffs
**Pro hac vice motion pending*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to counsel for all other parties.

This the 14th day of December, 2021.

/s/ Samuel F. Callahan

Samuel F. Callahan

Exhibit 2

Alyssa Riggins

From: Callahan, Sam <Sam.Callahan@arnoldporter.com>
Sent: Wednesday, December 22, 2021 10:27 AM
To: Phil Strach; 'McKnight, Katherine L.'; Alyssa Riggins; 'Feldman, Stephen'; Tom Farr; John Branch; Braden, E. Mark; Raile, Richard; 'Brennan, Stephanie'; 'Majmundar, Amar'; 'tsteed@ncdoj.gov'; 'Burton Craige'; 'Narendra Ghosh'; 'Paul Smith'; 'melias@elias.law'; 'abbranch@elias.law'; 'lmadduri@elias.law'; 'jshelly@elias.law'; 'gwhite@elias.law'; 'akhanna@elias.law'; Jones, Stanton; Theodore, Elisabeth; Cella, John; 'Doerr, Adam'; 'Zimmerman, Erik'; 'Hirsch, Sam'; 'Amunson, Jessica Ring'; 'Kali Bracey'; 'Schauf, Zachary C.'; 'Mittal, Urja R.'; Hilary Harris Klein; Allison Riggs; Talia Ray; Chris Shenton; Noor Taj; Molodanof, Olivia; Boer, Tom
Subject: RE: NCLCV v Hall (21 CVS 15426) -- deposition notices

Phil: While we certainly wish to avoid unnecessary motions practice, we believe it's important to establish a clear record regarding the invocation of legislative privilege and to tee up the sword/shield issue for resolution by the Court. Accordingly, similar to what occurred in the 2019 *Common Cause* case, we believe you should seek a protective order based on legislative privilege. Also similar to the 2019 litigation, we will not oppose entry of a protective order subject to our position that a party cannot invoke legislative privilege to block discovery and then offer the testimony of a legislator who invoked privilege or others at trial regarding matters that were shielded from discovery. In the meantime, pending resolution of the motion for protective order, we would agree not to proceed with the depositions of the legislators who have invoked legislative privilege; only Rep. Hall's and Sen. Hise's depositions will go forward.

Best,
Sam

From: Phil Strach <phil.strach@nelsonmullins.com>
Sent: Tuesday, December 21, 2021 7:05 PM
To: Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'McKnight, Katherine L.' <kmcknight@bakerlaw.com>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Cella, John <John.Cella@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>; Hilary Harris Klein <hilaryhklein@scsj.org>; Allison Riggs <AllisonRiggs@southerncoalition.org>; Talia Ray <taliaray@scsj.org>; Chris Shenton <chrisshenton@scsj.org>; Noor Taj <noor@scsj.org>; Molodanof, Olivia <olivia.molodanof@hoganlovells.com>; Boer, Tom <tom.boer@hoganlovells.com>
Subject: RE: NCLCV v Hall (21 CVS 15426) -- deposition notices

External E-mail

Sam,

We are not aware of a procedure under the NC Rules of Civil Procedure to file a formal objection to a deposition notice to a party. We are only aware of the option of filing a motion for a protective order under Rule 26, N.C.R. Civ. P. We are certainly willing to file such a motion but don't think it would be in anyone's interest to seek judicial intervention based on the parties' current positions. If you are aware of another option to object, please let me know. Otherwise, please let me know if we will need to file a motion for protective order.

Thanks.

Phil



PHILLIP J. STRACH PARTNER

phil.strach@nelsonmullins.com

GLENLAKE ONE | SUITE 200

4140 PARKLAKE AVENUE | RALEIGH, NC 27612

T 919.329.3812 F 919.329.3799

NELSONMULLINS.COM [VCARD](#) [VIEW BIO](#)

From: Callahan, Sam <Sam.Callahan@arnoldporter.com>

Sent: Tuesday, December 21, 2021 3:56 PM

To: Phil Strach <phil.strach@nelsonmullins.com>; 'McKnight, Katherine L.' <kmcknight@bakerlaw.com>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craig' <bcraig@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abran@elias.law' <abran@elias.law>; 'lmadduri@elias.law'; 'jshelly@elias.law'; 'gwhite@elias.law'; 'akhanna@elias.law'; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Cella, John <John.Cella@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>; Hilary Harris Klein <hilaryhklein@scsj.org>; Allison Riggs <AllisonRiggs@southerncoalition.org>; Talia Ray <taliaray@scsj.org>; Chris Shenton <chrisshenton@scsj.org>; Noor Taj <noor@scsj.org>; Molodanof, Olivia <olivia.molodanof@hoganlovells.com>; Boer, Tom <tom.boer@hoganlovells.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- deposition notices

Phil (and adding counsel for Common Cause),

We were simply quoting from the 2019 *Common Cause* order, which makes clear that after invoking privilege as to one legislator, a party cannot introduce related testimony from another legislator. In any event, since as you say that is likely an issue that we will need to take to the court, in the meantime we will go forward with depositions of Sen. Hise and Rep. Hall, without waiver of our right to move to preclude their trial testimony based on the sword/shield doctrine or any other appropriate reason. We don't believe that Sen. Hise and Rep. Hall can waive privilege while refusing to answer questions that "impinge on another legislator's privilege," but we can see whether such an issue comes up at the depositions. Could you provide availability on Dec. 27 or Dec. 28?

As to the deposition notices for the four legislators who are invoking legislative privilege, we don't intend to withdraw them. We think the proper course would be for you to serve a formal objection on the basis of legislative privilege. If you serve such an objection, we do not intend to move to compel their testimony and we can go forward on the understanding that their depositions will not proceed.

Best,
Sam

From: Phil Strach <phil.strach@nelsonmullins.com>

Sent: Tuesday, December 21, 2021 10:50 AM

To: Callahan, Sam <Sam.Callahan@arnoldporter.com>; McKnight, Katherine L.' <kmcknight@bakerlaw.com>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craig' <bcraig@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abran@elias.law' <abran@elias.law>; zzz.External.Imadduri@elias.law <Imadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- deposition notices

External E-mail

Sam:

We do not read the 2019 *Common Cause* order the way you described it below and of course it is not binding in this case. We do not believe Rep. Hall or Sen. Hise will be using the privilege as a sword in any way. If you disagree, the Court will be in the best position to address your concerns on any specific testimony at trial. Regarding your second question, Rep. Hall and Sen. Hise are not asserting a "partial" waiver of legislative privilege; they are testifying both at any deposition and at trial. However, if they are asked questions that would impinge on another legislator's privilege, or involve areas outside of redistricting, then they reserve the right to make an appropriate objection at the time.

Please confirm today that plaintiffs are withdrawing the other notices so that we can avoid motions practice as to them.

Regards,

Phil



PHILLIP J. STRACH **PARTNER**

phil.strach@nelsonmullins.com

GLENLAKE ONE | SUITE 200

4140 PARKLAKE AVENUE | RALEIGH, NC 27612

T 919.329.3812 F 919.329.3799

From: Callahan, Sam <Sam.Callahan@arnoldporter.com>

Sent: Monday, December 20, 2021 4:59 PM

To: Phil Strach <phil.strach@nelsonmullins.com>; 'McKnight, Katherine L.' <kmcknight@bakerlaw.com>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; lmadduri@elias.law; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- deposition notices

Phil: Thank you for your response. We have two questions about your proposal.

First, in light of your assertion of legislative privilege as to Speaker Moore, and Sens. Berger, Daniel, and Newton, we assume that you will (1) not try to introduce their testimony at trial, or any “evidence or testimony that derives directly or indirectly from non-public information provided by, or non-public communications with,” those legislators; and (2) will not introduce “evidence or testimony” from any witness, including Rep. Hall or Sen. Hise, “that otherwise seeks to explain the General Assembly’s intent in drawing the challenged district plans, unless such testimony or evidence is based exclusively on the public legislative record or publicly available data.” See 7/7/2019 Order in *Common Cause* at 5. As you’ll recall, after Legislative Defendants asserted privilege in *Common Cause*, the court entered an order forbidding such testimony in evidence in light of North Carolina precedent establishing that parties cannot use a privilege as a shield to prevent testimony while at the same time selectively offering other evidence of their choice that relates to the privileged information. It wouldn’t be fair for you to present evidence relating to legislative intent with respect to particular districts or the map as a whole when we have been prevented from taking testimony from some of the key players who participated in the mapdrawing process. Can you confirm that in light of your invocation of legislative privilege you agree that you won’t introduce any evidence or testimony from any witness in those categories, including testimony from Rep. Hall and Sen. Hise that seeks to explain the legislative intent?

Second, as to Rep. Hall and Sen. Hise, could you prove more clarity on your proposal? Parties can’t engage in a “partial” waiver of legislative privilege. We can’t agree to a situation in which Rep. Hall and Sen. Hise would “waive” legislative privilege “as it pertains to being deposed” while still retaining the right to assert legislative privilege in response to specific deposition questions about the 2021 plans that they prefer not to answer. Relatedly, are you suggesting that Rep. Hall and Sen. Hise might answer certain questions at their deposition but then re-assert legislative privilege at trial?

We would appreciate if you could provide any response by noon tomorrow, December 21.

Thanks,
Sam

From: Phil Strach <phil.strach@nelsonmullins.com>

Sent: Monday, December 20, 2021 12:28 PM

To: Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'McKnight, Katherine L.' <kmcknight@bakerlaw.com>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>; Tom Farr

<tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- deposition notices

External E-mail

Sam,

Thanks for sending these notices. Please be advised that Speaker Moore, and Sens. Berger, Daniel, and Newton intend to assert legislative privilege and will not be testifying in this matter. Representative Hall and Senator Hise have agreed to waive legislative privilege as it pertains to being deposed (they may assert legislative privilege as it relates to specific questions at the depositions or at trial). Under North Carolina law legislative privilege clearly precludes a deposition or trial testimony of these legislators as it relates to the challenged redistricting plans. Please let us know by 10am tomorrow, Tuesday, December 21, whether plaintiffs will be withdrawing the deposition notices as to Speaker Moore, and Sens. Berger, Daniel, and Newton.

Thanks.

Phil



PHILLIP J. STRACH **PARTNER**

phil.strach@nelsonmullins.com

GLENLAKE ONE | SUITE 200

4140 PARKLAKE AVENUE | RALEIGH, NC 27612

T 919.329.3812 F 919.329.3799

NELSONMULLINS.COM [VCARD](#) [VIEW BIO](#)

From: Callahan, Sam <Sam.Callahan@arnoldporter.com>

Sent: Tuesday, December 14, 2021 7:39 PM

To: 'McKnight, Katherine L.' <kmcknight@bakerlaw.com>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>; Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abbranch@elias.law' <abbranch@elias.law>; lmadduri@elias.law; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>;

'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>

Subject: NCLCV v Hall (21 CVS 15426) -- deposition notices

◀External Email▶ - From: prvs=976b056c8=Sam.Callahan@arnoldporter.com

Counsel: I've attached the *Harper* Plaintiffs' notices of depositions for the six Legislative Defendants.

Thank you,
Sam

Sam Callahan
Associate

Arnold & Porter
601 Massachusetts Ave., NW
Washington | District of Columbia 20001-3743
T: +1 202.942.5816
Sam.Callahan@arnoldporter.com | www.arnoldporter.com

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

For more information about Arnold & Porter, click here:
<http://www.arnoldporter.com>

Exhibit 3

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

COMMON CAUSE, *et al.*
Plaintiffs,

v.

Representative DAVID R. LEWIS,
in his official capacity as Senior
Chairman of the House Select
Committee on Redistricting, *et al.*,
Defendants.

ORDER ON OUTSTANDING
PRE-TRIAL MOTIONS

THIS MATTER comes before the undersigned three-judge panel upon the parties' outstanding pre-trial motions.

A hearing on outstanding pre-trial motions was held on July 10, 2019, and the matters were taken under advisement. After considering the motions and the parties' briefs, submissions, and arguments, and having reviewed the record proper, the Court, in its discretion, rules upon each motion as follows:

I. Plaintiffs' Motion in Limine to Preclude Legislative Defendants from Offering Evidence Related to the Voting Rights Act

Plaintiffs' motion seeks to preclude, pursuant to the equitable doctrine of judicial estoppel, Legislative Defendants from offering evidence or argument relating to the Voting Rights Act based on Legislative Defendants' prior assertions in *Covington v. North Carolina*, No. 1:15-CV-00399 (M.D.N.C.). Legislative Defendants filed a response arguing that judicial estoppel does not apply because Legislative Defendants do not intend to change their position in this litigation from that expressed to the federal court in *Covington*.

The Court, in its discretion, denies Plaintiffs' request at this time; however, Plaintiffs may reassert this objection to evidence or testimony relating to the Voting Rights Act at the time such evidence or testimony, if any, is proffered at trial.

II. Plaintiffs' Motion in Limine to Preclude Legislative Defendants and Intervenor Defendants from Introducing Expert Analysis Not Disclosed in Expert Reports

Plaintiffs' motion seeks to preclude, pursuant to Rule 26 of the North Carolina Rules of Civil Procedure, any Legislative Defendants' or Intervenor Defendants' experts from testifying or presenting evidence concerning any analyses or opinions not disclosed in their expert reports. On July 8, 2019, Plaintiffs filed a supplemental brief in support of their motion after the parties exchanged trial exhibit lists. In their supplemental brief, Plaintiffs argue that Legislative Defendants' exhibit list includes new, undisclosed expert analysis. Specifically, Plaintiffs ask the Court to exclude: 1) testimony from two legislative staffers, R. Erika Churchill and Raleigh Myers, who were never identified by Legislative Defendants as experts in this case; 2) four exhibits identified as figures created by Legislative Defendants' expert Dr. Trey Hood; 3) two exhibits created by Legislative Defendants' expert Dr. Janet Thornton; and, 4) any other exhibits or testimony relating to undisclosed expert analysis or opinions. Legislative Defendants argue in response that the information Plaintiffs seek to exclude does not constitute expert analysis.

A lay witness may testify to facts within their personal knowledge that “can be perceived by the senses.” *State v. Broyhill*, __ N.C. App. __, __, 803 S.E.2d 832, 838-39 (2017) (quoting N.C.G.S. § 8C-1, Rule 602 cmt.). Lay witnesses may state “instantaneous conclusions of the mind as to the appearance, condition . . . or physical state of . . . things, *derived from observation of a variety of facts presented to the senses at one and the same time.*” *Id.* (quoting *State v. Leak*, 156 N.C. 643, 647, 72 S.E. 567, 568 (1911) (emphasis in original)). In contrast, North Carolina’s Rule of Evidence 702 provides that an expert may give an opinion “[i]f . . . technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue,” and if the other requirements of Rule 702 apply. N.C.G.S. § 8C-1, Rule 702(a). Thus, an expert renders an expert opinion when he “moves beyond reporting what he saw or experienced through his senses, and turns to interpretation or assessment ‘to assist’ the jury based on his ‘specialized knowledge.’” *Broyhill*, __ N.C. App. at __, 803 S.E.2d at 839 (quoting *State v. Davis*, 368 N.C. 794, 798, 785 S.E.2d 312, 315 (2016)).

Based on the foregoing, the Court, in its discretion, grants in part and denies in part Plaintiffs’ motion, as follows:

- a. Plaintiffs’ motion is denied as to Legislative Defendants’ Trial Exhibits 024-1 through 024-13 (Affidavit of R. Erika Churchill and accompanying Exhibits). The exhibits and testimony presented by Ms. Churchill are a straightforward recitation of facts that are neither derived from specialized knowledge nor the product of assessment or interpretation, and therefore do not constitute expert analysis or opinion.
- b. For similar reasons, Plaintiffs’ motion is denied as to Legislative Defendants’ Trial Exhibits 025-8 through 025-79 (Exhibits 1-15 accompanying the Affidavit of Raleigh Myers).

- c. Plaintiffs' motion is granted as to Legislative Defendants' Trial Exhibits 025-81 through 025-397 (Exhibits 16-174 accompanying the Affidavit of Raleigh Myers). These exhibits display certain Geographic Information Systems "GIS" maps purporting to demonstrate, for example, instances where district boundaries dividing a voting district follow a precinct line. Inherent in the creation of such maps is the application of specialized knowledge that moves beyond a mere report of facts observed through the senses because it necessarily requires assessing and transmuting technical data. Moreover, expert assistance would be required to properly interpret the maps. Consequently, these exhibits constitute expert analysis or opinion.
- d. Plaintiffs' motion is granted as to Legislative Defendants' Trial Exhibits 141 through 144 (exhibits created by Dr. Trey Hood). These exhibits were not timely disclosed in Dr. Hood's initial expert report dated April 30, 2019, or in his supplemental report dated May 7, 2019, and are therefore excluded for failure to comply with N.C.G.S. § 1A-1, Rule 26(b)(4)(a)(2).
- e. For the same reasons, Plaintiffs' motion is granted as to Legislative Defendants' Trial Exhibits 170 and 171 (exhibits created by Dr. Janet Thornton) because these exhibits were not disclosed in Dr. Thornton's initial expert report or in her rebuttal report dated May 7, 2019.

III. Plaintiffs' Motion in Limine to Preclude Legislative Defendants from Introducing Evidence Under the Sword and Shield Doctrine

The Court entered an order on March 25, 2019, granting Legislative Defendants' February 5, 2019, motion for a protective order as to twelve legislators' and legislative staffers' claim of legislative privilege while also concluding that Legislative Defendants were estopped from withdrawing their prior assertions of legislative privilege for Defendants Lewis and Hise. In that same order, the Court noted that Plaintiffs could seek to be heard prior to trial on related evidentiary matters should Legislative Defendants offer 1) testimony from any of the twelve individuals who had asserted privilege, 2) evidence or testimony that derives directly or indirectly from non-public information provided by, or non-public communications with, the twelve individuals asserting privilege, or 3) evidence or

testimony that otherwise seeks to explain the legislature’s intent in drawing the challenged district plans, unless such testimony or evidence is based exclusively on the public legislative record or publicly available data. Plaintiffs’ motion seeks to preclude Legislative Defendants from offering such evidence and testimony.

A party cannot use a privilege both as a “shield” to prevent discovery and a “sword” to present evidence or claims that relate to the privileged information. *See, e.g. State v. Buckner*, 351 N.C. 401, 410 (2000); *Qurneh v. Colie*, 122 N.C. App. 553, 558 (1996). The Court, in its discretion, grants Plaintiffs’ requested relief in this motion as to the twelve legislators and legislative staff encompassed by the Court’s March 25, 2019, order. Legislative Defendants, however, are not precluded from offering evidence or testimony from legislators or legislative staff who have not previously asserted a claim of legislative privilege and will waive such privilege at trial, provided that Legislative Defendants do not offer: 1) evidence or testimony that derives directly or indirectly from non-public information provided by, or non-public communications with, the twelve individuals asserting privilege; or, 2) evidence or testimony that otherwise seeks to explain the General Assembly’s intent in drawing the challenged district plans, unless such testimony or evidence is based exclusively on the public legislative record or publicly available data.

IV. Plaintiffs’ Motion in Limine to Exclude Live Testimony from More Than One Intervenor-Defendant

Intervenor-Defendants intend to present testimony through affidavits for three of the Intervenorors and through live testimony for the remaining four Intervenorors. Plaintiffs’ motion seeks, pursuant to Rules 401 and 403 of the North

Carolina Rules of Evidence, to limit live testimony to at most only one individual Intervenor on the grounds that additional testimony will be irrelevant, likely duplicitous, and will likely cause undue delay.

Under Rule 611 of the North Carolina Rules of Evidence, the Court “shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth [and] (2) avoid needless consumption of time.” N.C.G.S. § 8C-1, Rule 611. The Court, in its discretion, denies Plaintiffs’ motion; however, Intervenor Defendants are cautioned that the Court will, if necessary, exercise its authority under Rule 611 to limit live testimony from Intervenor Defendants to make the presentation of evidence effective for the ascertainment of truth and avoid needless consumption of time.

V. *Intervenor-Defendants’ Motion in Limine to Exclude Evidence of Dismissed Criminal Charges*

Intervenor Defendants’ motion seeks to exclude any and all evidence, references to evidence, testimony, or argument relating to Intervenor Reginald Reid’s dismissed criminal charges. Plaintiffs have responded that Plaintiffs will not offer evidence relating to Intervenor Reid’s dismissed criminal charges at trial. Accordingly, the Court, in its discretion, grants Intervenor Defendants’ motion.

VI. *Plaintiffs’ Emergency Motion to Compel Legislative Defendants to Produce Revised Calculations of Dr. Jeffrey Lewis*

Plaintiffs’ emergency motion seeks to compel revised calculations of Dr. Jeffrey Lewis that Plaintiffs requested from Legislative Defendants immediately

following Dr. Lewis's deposition on June 11, 2019. The Court, in its discretion, grants Plaintiffs' request to compel Legislative Defendants to produce to Plaintiffs the revised calculations of Dr. Lewis without delay.

Plaintiffs also request fees and costs, pursuant to Rule 37(a) of the North Carolina Rules of Civil Procedure, incurred in obtaining an order compelling Legislative Defendants to produce the revised calculations sought in their emergency motion to compel. The Court, in its discretion, declines to award Plaintiffs fees and costs in connection with this motion.


Conclusion


WHEREFORE, the Court, for the reasons stated herein and in the exercise of its discretion, hereby ORDERS as follows:

1. Plaintiffs' motion *in limine* to preclude Legislative Defendants from offering evidence or argument relating to the Voting Rights Act is DENIED in accordance with the terms of this Order.
2. Plaintiffs' motion *in limine* to preclude Legislative and Intervenor Defendants from introducing expert testimony regarding analysis or opinions not disclosed in expert reports is DENIED in part and GRANTED in part, as follows and in accordance with the terms of this Order:
 - a. Plaintiffs' motion is denied as to Legislative Defendants' Trial Exhibits 024-1 through 024-13.
 - b. Plaintiffs' motion is denied as to Legislative Defendants' Trial Exhibits 025-8 through 025-79 and granted as to Legislative Defendants' Trial Exhibits 025-81 through 025-397.
 - c. Plaintiffs' motion is granted as to Legislative Defendants' Trial Exhibits 141-144.
 - d. Plaintiffs' motion is granted as to Legislative Defendants' Trial Exhibits 170 and 171.

3. Plaintiffs' motion *in limine* to preclude Legislative Defendants from introducing evidence or testimony under the sword and shield doctrine is GRANTED; however, Legislative Defendants are not precluded from offering evidence or testimony from legislators who have not asserted legislative privilege, provided such evidence and testimony is in accordance with the terms of this Order.
4. Plaintiffs' motion *in limine* to limit Intervenor Defendants to live testimony from only one Intervenor is DENIED in accordance with the terms of this Order.
5. Intervenor Defendants' motion *in limine* to exclude evidence of Intervenor Reid's dismissed criminal charges is GRANTED.
6. Plaintiffs' emergency motion to compel is GRANTED in part, as follows:
 - a. Legislative Defendants shall produce to Plaintiffs by 10:00 a.m. on July 15, 2019, the revised calculations of Dr. Jeffrey Lewis.
 - b. Plaintiffs' request for fees and costs is denied.

So ORDERED, this the 16 day of July, 2019.



Paul C. Ridgeway, Superior Court Judge

Joseph N. Crosswhite, Superior Court Judge

Alma L. Hinton, Superior Court Judge

Certificate of Service

The undersigned certifies that the foregoing was served upon all parties by electronic mail, addressed as follows:

Edwin M. Speas, Jr.
Caroline P. Mackie
Poyner Spruill LLP
espeas@poynerspruill.com
cmackie@poynerspruill.com
*Counsel for Common Cause,
The North Carolina Democratic Party
And the Individual Plaintiffs*

R. Stanton Jones
David P. Gersch
Elisabeth S. Theodore
Daniel F. Jacobson
Arnold & Porter Kaye Scholer LLP
Stanton.jones@arnoldporter.com
David.gersch@arnoldporter.com
Elisabeth.theodore@arnoldporter.com
Daniel.jacobson@arnoldporter.com
*Counsel for Common Cause
And for Individual Plaintiffs*

Mark E. Braden
Richard Raile
Trevor Stanley
Katherine McKnight
Elizabeth Scully
Erica Prouty
Baker & Hostetler LLP
rraile@bakerlaw.com
mbraden@bakerlaw.com
tstanley@bakerlaw.com
kmcknight@bakerlaw.com
EScully@bakerlaw.com
eprouthy@bakerlaw.com
Attorneys for Legislative Defendants

Marc E. Elias
Aria C. Branch
Abha Khanna
Perkins Coie LLP
melias@perkinscoie.com
ABranch@perkinscoie.com
akhanna@perkinscoie.com
*Counsel for Common Cause
And the Individual Plaintiffs*


Phillip J. Strach
Michael McKnight
Alyssa Riggins
Ogletree Deakins
Phillip.strach@ogletree.com
Michael.mcknight@ogletree.com
Alyssa.riggins@ogletree.com
Counsel for Legislative Defendants

Stephanie A. Brennan
Amar Majmundar
Paul Cox
NC Department of Justice
sbrennan@ncdoj.gov
amajmundar@ncdoj.gov
pcox@ncdoj.gov
*Counsel for the State of North
Carolina and members of the State
Board of Elections*

Katelyn Love
NC State Board of Elections
legal@ncsbe.gov
Counsel for the State Board of Elections

John E. Branch, III
Nathaniel J. Pencook
Andrew D. Brown
Shanahan Law Group PLLC
jbranch@shanahanlawgroup.com
npencook@shanahanlawgroup.com
abrown@shanahanlawgroup.com
Attorneys for Defendant-Intervenors

This the 18th day of July, 2019.



Kellie Z. Myers
Trial Court Administrator
10th Judicial District
kellie.z.myers@nccourts.org

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 21 CVS 015426
No. 21 CVS 500085

NORTH CAROLINA LEAGUE OF CONSERVATION
VOTERS, INC., *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

***HARPER* PLAINTIFFS’
RESPONSE TO
LEGISLATIVE
DEFENDANTS’ MOTION
FOR PROTECTIVE ORDER**

Under settled North Carolina law, a litigant may not use a privilege as both a “shield” to prevent discovery and a “sword” to present testimony or evidence related to the privileged information. That is precisely what Legislative Defendants seek to do here—they ask the Court to enter a protective order blocking depositions of four legislators based on legislative privilege, while allowing two other legislators to testify at trial about the same privileged matters. The legislative defendants attempted the same gambit in the 2019 *Common Cause* litigation, and the court there rightly rejected it. The court entered the requested protective order, but also held that, under the well-established sword/shield doctrine, the legislative defendants were precluded from offering testimony or evidence at trial—either their own testimony or testimony or evidence from others—related to the privileged information.

That is what should happen here. The dispute here is not whether four Legislative Defendants can invoke legislative privilege to block their depositions; the dispute, rather, is whether Legislative Defendants, having so invoked the privilege to prevent discovery regarding the mapmaking process and legislative intent, can turn around a present evidence or testimony at trial on those topics. They cannot. *Harper* Plaintiffs accordingly consent to entry of the requested protective order so long as the Court precludes Legislative Defendants from using the privilege as a shield (to block depositions) and a sword (to offer testimony or evidence relating to the privileged information).

BACKGROUND

A. 2019 Common Cause Litigation

During discovery in the 2019 *Common Cause* litigation, the plaintiffs noticed depositions of the legislative defendants as well as several non-party legislators and legislative staff involved in the redistricting process. *See* 3/25/19 *Common Cause* Order at 1-2 (attached as Ex. A). The

legislative defendants and non-parties moved for a protective order to block all twelve depositions based on legislative privilege. *Id.* at 2. In response, the plaintiffs explained that they consented to entry of the requested protective order so long as the court specified that the legislative defendants would be precluded from offering evidence and testimony at trial deriving, directly or indirectly, from the legislators who had invoked privilege, and would be precluded from offering “evidence or testimony that otherwise seeks to explain the legislature’s intent in drawing the challenged districting plans, unless such testimony or evidence is based exclusively on the public legislative record or publicly available data.” Plaintiffs’ Resp. at 1 (attached as Ex. B). The plaintiffs relied on authority from the North Carolina Supreme Court and other courts holding that a party may not use a privilege both as a “shield” to prevent discovery and a “sword” to present evidence that relates to the privileged information, including by selectively asserting privilege to protect certain legislative information from discovery while claiming the right to introduce other legislative information of their choosing. *Id.* at 3-7. One week later, the legislative defendants purported to partially “withdraw” their motion for protective order—but only as to two of the legislative defendants, Senator Hise and then-Representative Lewis. Ex. A at 2-3.

In March 2019, the *Common Cause* court granted the protective order in full, blocking the depositions and discovery and declining to permit the legislative defendants’ partial withdrawal of their motion. The court explained that the legislative defendants’ “change [in] position” with respect to legislative privilege, which they had previously used “as a shield to prevent discovery,” would “provide an unfair benefit to Legislative Defendants and impose an unfair detriment on Plaintiffs.” Ex. A at 4. With trial still several months away, the court found it premature to conclusively resolve the application of the sword/shield doctrine. *Id.* at 5 n.1.

But the court instructed that its order did not prevent the plaintiffs from asking, prior to trial, that the legislative defendants be forbidden from offering “(1) testimony from any of the [individuals] who have asserted privilege, (2) evidence or testimony that derives directly or indirectly from non-public information provided by, or non-public communications with, the ... individuals asserting privilege, or (3) evidence or testimony that otherwise seeks to explain the legislature’s intent in drawing the challenged districting plans, unless such testimony or evidence is based exclusively on the public legislative record or publicly available data.” *Id.*

Before trial, the plaintiffs moved *in limine* seeking such an order. The legislative defendants opposed, arguing that it would be unfair to forbid testimony from individuals who “have never asserted legislative privilege in this matter.” Legislative Defendants’ Opp. to Pls.’ Mot. *in Limine* at 4 (attached as Ex. D). The legislative defendants argued that “[t]hese persons, having not invoked the shield of the privilege, may not now be barred from testifying through plaintiffs’ use of this motion as a sword against them.” *Id.*

The court disagreed and granted plaintiffs’ motion. 7/17/19 *Common Cause* Order at 4-5 (attached as exhibit 3 to Legislative Defendants’ motion). Relying on the sword/shield doctrine, the court ordered that the legislative defendants could not introduce any evidence or testimony from “the twelve legislators and legislative staff” encompassed by its prior protective order. *Id.* at 5. The court *further* held that the legislative defendants could introduce “evidence or testimony from legislators or legislative staff who have not previously asserted a claim of legislative privilege,” but only “*provided* that Legislative Defendants do *not* offer 1) evidence or testimony that derives directly or indirectly from non-public information provided by, or non-public communications with, the ... individuals asserting privilege; or, 2) evidence or testimony that otherwise seeks to explain the General Assembly’s intent in drawing the challenged district

plans, unless such testimony or evidence is based exclusively on the public legislative record or publicly available data.” *Id.* (emphases added). In other words, the court held that while legislators who had not asserted privilege were not categorically prohibited from testifying at trial, they could not testify about legislative intent in the map-drawing process unless that testimony relied exclusively on public information.

The court subsequently enforced its order at trial to preclude legislator testimony about legislative intent in drawing the challenged maps. The legislative defendants called a non-party legislator to testify, Representative John Bell, who testified primarily on issues unrelated to the map-drawing process covered by the court’s sword/shield ruling. But when Representative Bell was asked whether he believed “that Democratic pockets of [certain] Counties were cracked into four separate districts,” the plaintiffs objected on the basis of the court’s sword/shield ruling, and the court sustained the objection because the testimony “connote[d]” the “intent of a map drawer.” Trial Tr. at 1759:22-1763:6 (excerpts attached as Ex. E).

B. This Litigation

On December 14, 2021, *Harper* Plaintiffs served deposition notices on the six Legislative Defendants here: Senator Philip E. Berger, Senator Warren Daniel, Representative Timothy K. Moore, Senator Paul Newton, Representative Destin Hall, and Senator Ralph E. Hise, Jr. On December 20, Legislative Defendants advised that four of the six legislators—Representative Moore and Senators Berger, Daniel, and Newton—intended to assert legislative privilege and would not be testifying as to “the challenged redistricting plans.” Mot. Ex. 2 at 5. But Legislative Defendants explained that Representative Hall and Senator Hise had “agreed to waive legislative privilege as it pertains to being deposed,” though they “may assert legislative privilege as it relates to specific questions at the depositions or trial.” *Id.*

Consistent with the sword/shield ruling in the *Common Cause* case, *Harper* Plaintiffs asked Legislative Defendants to confirm that, because four legislators had invoked privilege, Legislative Defendants would “(1) not try to introduce their testimony at trial, or any ‘evidence or testimony that derives directly or indirectly from non-public information provided by, or non-public communications with,’ those legislators; and (2) will not introduce ‘evidence or testimony’ from any witness, including Rep. Hall or Sen. Hise, ‘that otherwise seeks to explain the General Assembly’s intent in drawing the challenged district plans, unless such testimony or evidence is based exclusively on the public legislative record or publicly available data.’” Mot. Ex. 2 at 4 (quoting 7/17/19 *Common Cause* Order at 5). *Harper* Plaintiffs also sought clarification on Senator Hise’s and Representative Hall’s “partial’ invocations of privilege “as it pertains to being deposed.” *Id.* Legislative Defendants responded that Senator Hise and Representative Hall also intended to testify “at trial,” but that they reserved the right to object on privilege grounds to “questions that would impinge on another legislator’s privilege.” *Id.* at 3. Legislative Defendants also explained that they disagreed with *Harper* Plaintiffs’ understanding of the sword/shield doctrine and the scope of the *Common Cause* order applying it. *Id.*

While *Harper* Plaintiffs explained that they wished to avoid unnecessary motions practice, they explained that in light of the parties’ disagreement about these evidentiary questions, it was important to establish a clear record regarding the invocation of legislative privilege and to seek this Court’s resolution of the issue, and that Legislative Defendants accordingly should seek a protective order, as they did in 2019. *Id.* at 1. *Harper* Plaintiffs further explained that they did not intend to proceed with the depositions of the four legislators who had invoked legislative privilege. *Id.*

Harper Plaintiffs also informed Legislative Defendants that they would proceed with the depositions of Representative Hall and Senator Hise. *Id.* at 1. Those depositions are scheduled for December 27 and 29. Plaintiffs are conducting these depositions as a protective measure; for the reasons explained in this motion, Plaintiffs’ position is that neither Representative Hall nor Senator Hise may testify at trial about legislative intent because Legislative Defendants have used legislative privilege to shield related evidence from discovery.

ARGUMENT

As in the 2019 *Common Cause* case, *Harper* Plaintiffs do not oppose entry of a protective order quashing the deposition notices of certain legislators based on legislative privilege, so long as the Court also forbids Legislative Defendants from offering selective testimony about the map-drawing process and legislative intent, in violation of the sword/shield doctrine. *Harper* Plaintiffs thus request that in any protective order, the Court make clear that Legislative Defendants cannot “offer 1) evidence or testimony that derives directly or indirectly from non-public information provided by, or non-public communications with, the ... individuals asserting privilege; or, 2) evidence or testimony that otherwise seeks to explain the General Assembly’s intent in drawing the challenged district plans, unless such testimony or evidence is based exclusively on the public legislative record or publicly available data.” 7/17/19 *Common Cause* Order at 5. And the Court should make clear that this is so even if the evidence or testimony comes from legislators who have offered to waive legislative privilege.

That is what the three-judge panel held in *Common Cause* when, facing materially identical invocations of legislative privilege, it entered a pre-trial protective order materially identical to the one Legislative Defendants request here, *i.e.*, prohibiting depositions of legislators. As explained above, the court then enforced that order to preclude testimony from

legislators who had not previously invoked legislative privilege, but whose testimony would violate the well-established sword/shield doctrine. The decision in *Common Cause* was correct. This Court should do the same, and as part of its order should make clear that Legislative Defendants may not introduce testimony at trial from Representative Hall, Senator Hise, or anyone else regarding the legislature’s supposed intent in creating the challenged 2021 plans.

Common Cause’s sword/shield ruling was dictated by controlling precedent that applies with equal force here. North Carolina courts, like other courts, have long prohibited parties from using privilege “both as a ‘shield’ to prevent discovery and a ‘sword’ to present evidence or claims that relate to the privileged information.” 7/17/19 *Common Cause* Order at 5 (quoting *State v. Buckner*, 351 N.C. 401, 410 (2000), and *Qurneh v. Colie*, 122 N.C. App. 553, 558 (1996)). A party therefore may not “use[] an assertion of fact to influence the decisionmaker while denying its adversary access to privileged material potentially capable of rebutting the assertion.” *Favors v. Cuomo*, 285 F.R.D. 187, 199 (E.D.N.Y. 2012) (quotation marks omitted). As such, parties face a “choice” of either standing on the privilege or waiving it in order to advance related evidence or claims. *Cantwell v. Cantwell*, 109 N.C. App. 395, 396, 427 S.E.2d 129, 130 (1993). Where a party elects “to stand behind its privilege and refuse[s] to produce” relevant information, “that exercise of the privilege will preclude it from introducing” related evidence at trial. *Belmont Textile Mach. Co. v. Superba, S.A.*, 48 F. Supp. 2d 521, 523 (W.D.N.C. 1999). At minimum, the doctrine prevents introduction of evidence or testimony that the opposing party would have been “potentially capable of rebutting” through discovery that the party was denied, *Favors v. Cuomo*, 285 F.R.D. 187, 199 (E.D.N.Y. 2012), or that “in fairness requires examination of protected communications,” *United States v. Bilzerian*, 926 F.2d 1285,

1292 (2d Cir. 1991). This principle applies equally to plaintiffs and defendants. *See, e.g., Cantwell*, 109 N.C. App. at 396, 427 S.E.2d at 130.

The sword/shield doctrine fully applies to the assertion of legislative privilege in redistricting cases. “[C]ourts have been loath to allow a legislator to invoke the privilege at the discovery stage, only to selectively waive it thereafter in order to offer evidence to support the legislator’s claims or defenses.” *Favors*, 285 F.R.D. at 212. Courts thus preclude legislators from offering certain evidence in defense of redistricting plans where those legislators blocked discovery based on legislative privilege. In a challenge to Pennsylvania’s congressional districts, the legislative defendants asserted legislative privilege to preclude their depositions and other discovery related to legislative intent in drawing the map. The state trial court upheld the privilege assertions—and then blocked the legislative defendants from introducing evidence related to legislative intent under the sword/shield doctrine. The court precluded the defendants “from offering evidence that [the plaintiffs] could not obtain in discovery due to [the] Court’s ... order” upholding the legislative defendants’ privilege assertions. Trial Tr. at 94, *League of Women Voters of Pa. v. Commonwealth*, No. 261 M.D. 2017 (excerpts attached as Ex. F). The court further made clear that the legislative defendants could not offer expert testimony that was based on consultations with legislative staff who had been “shielded from [the plaintiffs’] deposition efforts” on the basis of legislative privilege. *Id.* at 32.

The district court in *Doe v. Nebraska*, 898 F. Supp. 2d 1086 (D. Neb. 2012), similarly precluded legislators from introducing evidence at trial pursuant to the sword/shield doctrine. In *Doe*, plaintiffs challenging a Nebraska statute under the Ex Post Facto Clause sought to depose Nebraska legislators regarding their intent and objectives in crafting the statute. The defendants “successfully asserted legislative privileges to thwart the plaintiffs’ effort to get at the truth.” *Id.*

at 1126. At trial, the plaintiffs presented evidence that the legislature had acted with impermissible intent. When the defendants sought to challenge that evidence, the court held that they were precluded from doing so under the sword/shield doctrine. “While the defendants and their lawyers were entitled to invoke [legislative privilege]” to withhold discovery, they could not then “claim [at trial] that the evidence is lacking regarding the true motives of the law-makers.” *Id.* “That is, the defendants will not be allowed to use their privilege defenses as both a sword and a shield.” *Id.*

Legislative Defendants’ requested protective order squarely implicates the sword/shield doctrine. As Legislative Defendants explain, four of them have invoked legislative privilege as “an absolute shield” from discovery. Mot. 8. They have done so specifically to preclude depositions regarding “the challenged redistricting plans.” Mot. Ex. 2 at 5. Yet two other Legislative Defendants—Senator Hise and Representative Hall—“have agreed to waive their personal legislative immunity.” Mot. 8. Both of these legislators have “direct knowledge of the 2021 redistricting process,” and Legislative Defendants intend to use them to introduce testimony “with respect to the legislative process at issue,” *i.e.*, the drawing of the 2021 plans. Mot. 8. Legislative Defendants have explained that both legislators intend to testify “at trial,” Mot. Ex. 2 at 3, and that they intend to testify specifically about the 2021 redistricting process over which the four other legislators have invoked legislative privilege to block discovery.

This is precisely the situation the sword/shield doctrine prohibits. Plaintiffs would be prevented from obtaining information directly relevant to their claims that Legislative Defendants intentionally drew district lines to disadvantage Democrats, from individuals who have direct knowledge of and participated in the legislature’s mapmaking process. Senators Daniel and Newton, for example, are co-sponsors of the enacted Senate plan and the enacted

congressional plan. And Speaker Moore and President Berger were likely significantly involved in the mapmaking process as well. That is the quintessential “shield.” Legislative Defendants meanwhile would be able to selectively waive privilege on behalf of individual legislators whom they think will provide favorable testimony on that subject and offer their testimony affirmatively, to rebut other evidence of impermissible intent. That is the quintessential “sword.” *See, e.g., Favors*, 285 F.R.D. at 212. Legislative Defendants cannot do this, any more than a criminal defendant with two lawyers could waive attorney-client privilege as to communications with one lawyer and not the other about the same topic. *See Bilzerian*, 926 F.2d at 1292-93.

Indeed, the context here exacerbates the prejudice to Plaintiffs. The four Legislative Defendants who have invoked privilege are likely to have significant, and likely unique, knowledge about the process leading to enactment of the 2021 Plans. Plaintiffs have alleged that although Legislative Defendants nominally prohibited the use of partisan data in the drawing of maps, the maps were in fact drawn with such data—a practice enabled by Legislative Defendants’ refusal to police the materials that legislators and staff could bring into the map-drawing room. *Harper Am. Compl.* ¶¶ 106-108; *see Harper Mot. for Prelim. Inj.* at 6-8. Representative Hall—Chairman of the House Redistricting Committee and one of the two legislators who has waived privilege—stated in response to questions about whether there had been “maps drawn outside of this building that any of us have been privy to,” that he “ha[d] not contributed to the drawing of any map” outside the confines of the legislative chamber but could not “speak for other members of this committee.” Oct. 5, 2021 H. Redistricting Comm. Hr’g Tr. at 61:19-62:2 (excerpts attached as Ex. G). Representative Hall thus appears likely to testify that he has no knowledge of the use of outside materials or data reflecting partisan considerations.

Meanwhile, the Legislative Defendants who have invoked privilege—all in leadership positions, including two co-chairs of the Senate Redistricting Committee—may well have the direct knowledge that Representative Hall disclaimed. In other words, Plaintiffs will have been prevented from eliciting testimony from other legislators who might themselves have analyzed the partisan characteristics of the maps or worked with others who did so. And, of course, it is likely that Legislative Defendants chose to unilaterally offer particular legislators to testify, while selectively using legislative privilege to shield the testimony of others, based on their assessment of which legislators’ testimony would be most favorable to the defense. Again, that is precisely what the sword/shield doctrine is designed to prevent.

Moreover, Legislative Defendants have indicated that the two legislators who have waived privilege have done so only *partially*, as they may still invoke privilege to object to “questions that would impinge on another legislator’s privilege.” Mot. Ex. 2 at 3. Whatever the scope of this cryptic caveat, it threatens to further impede access to relevant information on the very topic over which other legislators have categorically invoked privilege to block any questioning. In short, Legislative Defendants’ “partial” waiver would lay the groundwork for Representative Hall and Senator Hise to present favorable testimony regarding legislative intent in one breath and refuse to disclose unfavorable information on the same topic in the next. This sort of prejudicial information asymmetry is the foundational purpose of sword/shield doctrine, and the Court should enforce it here.

Notably, Legislative Defendants devote the entire body of their motion to defending their assertions of legislative privilege—assertions that Plaintiffs have not contested. By contrast, Legislative Defendants identify no authority suggesting that the sword/shield doctrine would permit the trial testimony they intend to introduce from Representative Hall or Senator Hise.

Legislative Defendants briefly suggest that the 2019 *Common Cause* order did not “impose a blanket limitation” on testimony and evidence under the sword/shield doctrine but instead “imposed limitations as to the communications with legislators and staff members who had asserted legislative privilege.” Mot. 3. That is wrong. Plaintiffs in *Common Cause* requested—and the court granted—an order not only restricting testimony from those legislators and staff who had *invoked* privilege, but broadly precluding “evidence or testimony that derives ... from” those who had asserted privilege *or*, most relevant here, “evidence or testimony *that otherwise seeks to explain the General Assembly’s intent* in drawing the challenged district plans,” even if it came from other legislators who had not invoked privilege. 7/17/19 *Common Cause* Order at 5 (emphasis added). The reason Legislative Defendants resisted such an order is that, in their view, it would forbid testimony “about the relevant redistricting plans” from individuals who “have never asserted legislative privilege in this matter.” Ex. D at 4. Yet this restriction, plaintiffs explained in their *motion in limine*, was necessary because it would be “manifestly unfair for Legislative Defendants to offer evidence or testimony purporting to explain the legislature’s intent in drawing specific districts or the maps as a whole, when Plaintiffs were denied the ability to take discovery from the persons who know the truth regarding the legislature’s actual intent.” Ex. C at 6-7. The court agreed, and subsequently enforced its sword/shield ruling by sustaining objections to testimony about the map-drawing process and legislative intent from Representative Bell, who had not previously invoked legislative privilege. *Supra* p. 4; *see* Ex. E.

In any event, the *Common Cause* court did not break any new ground in its application of the sword/shield doctrine. It straightforwardly applied blackletter law preventing the selective use of privilege to prejudice an opposing party. *Supra* pp. 7-8. That established doctrine, not

Common Cause’s particular application, is what forbids Legislative Defendants from introducing legislative testimony related to the very matters as to which they have shielded discovery.

CONCLUSION

The Court should enter a protective order based on Legislative Defendants’ invocation of legislative privilege, but in doing so should forbid Legislative Defendants from “offer[ing]

1) evidence or testimony that derives directly or indirectly from non-public information provided by, or non-public communications with, the ... individuals asserting privilege; or, 2) evidence or testimony that otherwise seeks to explain the General Assembly’s intent in drawing the challenged district plans, unless such testimony or evidence is based exclusively on the public legislative record or publicly available data,” 7/17/19 *Common Cause* Order at 5—even if such testimony or evidence comes from a legislator who has not asserted privilege.

Respectfully submitted, this the 23rd day of December, 2021.

By: /s/ Narendra K. Ghosh

PATTERSON HARKAVY LLP

Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Harper Plaintiffs

ELIAS LAW GROUP LLP

Abha Khanna*
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
AKhanna@elias.law

Lalitha D. Madduri*
Jacob D. Shelly*
Graham W. White
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

Elisabeth S. Theodore
R. Stanton Jones*
John Cella
Samuel F. Callahan
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
elisabeth.theodore@arnoldporter.com

Counsel for Harper Plaintiffs
**Pro hac vice motion pending*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to counsel for all other parties.

This the 23rd day of December, 2021.

/s/ Samuel F. Callahan
Samuel F. Callahan (admitted *pro hac vice*)

EXHIBIT A

STATE OF NORTH CAROLINA
WAKE COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

COMMON CAUSE, *et al.*
Plaintiffs,

v.

Representative DAVID R. LEWIS,
in his official capacity as Senior
Chairman of the House Select
Committee on Redistricting, *et al.*,
Defendants.

ORDER GRANTING LEGISLATIVE
DEFENDANTS' MOTION FOR A
PROTECTIVE ORDER AND
PLAINTIFFS' FIRST MOTION TO
COMPEL

THIS MATTER comes before the undersigned three-judge panel upon Legislative Defendants' Motion for a Protective Order, Plaintiffs' First Motion to Compel discovery responses from Legislative Defendants, and Plaintiffs' Second Motion to Compel discovery responses from Legislative Defendants.

Procedural and Factual Background

On November 13, 2018, Plaintiffs served a first set of interrogatories and requests for production of documents on Legislative Defendants. On January 4, 2019, Legislative Defendants served initial responses to Plaintiffs' first discovery requests. On January 16, 2019, Plaintiffs served a second set of interrogatories on Legislative Defendants. On January 25, 2019, Plaintiffs served a third set of interrogatories on Legislative Defendants.

On January 24, 2019, Plaintiffs issued notices of deposition to Representative David R. Lewis ("Defendant Lewis"), Senator Ralph E. Hise ("Defendant Hise"), Speaker of the N.C. House Timothy K. Moore, and President Pro Tempore of the N.C. Senate Philip E. Berger, and subpoenas to Legislative Employee Mark

Coggins, Senator Trudy Wade, Representative Nelson Dollar, Senator Wesley Meredith, Senator John Alexander, Senator Robert Rucho, Former Legislative Employee Jim Blaine, and Senator Dan Bishop. On February 5, 2019, Legislative Defendants and the subpoenaed deponents filed a motion for a protective order in response to Plaintiffs' notices of deposition and subpoenas, claiming legislative immunity and privilege. Legislative Defendants did not calendar this motion for hearing.

On February 15, 2019, the parties entered into a stipulated proposed case management order setting forth deadlines for completion of discovery.

Also on February 15, 2019, Legislative Defendants served supplemental responses to Plaintiffs' initial discovery requests, along with initial responses to Plaintiffs' second and third sets of interrogatories. On February 19, 2019, Plaintiffs filed their first motion to compel. On February 22, 2019, Plaintiffs filed their second motion to compel. Neither party calendared these motions for hearing.

On March 13, 2019, the Court upon its own motion entered a case management order for the purposes of setting out an orderly process for the submission of filed papers to the Court and requests for hearings. The parties have since responded to or made their position known as to each motion in accordance with the March 13, 2019, case management order and requested a hearing on the motions.

In Legislative Defendants' email correspondence to the Court on March 18, 2019, stating their position on the motion for a protective order, Legislative

Defendants for the first time asserted that Defendants Lewis and Hise no longer wished to assert legislative privilege.

On March 21, 2019, a telephonic hearing was held on Legislative Defendants' motion for a protective order and Plaintiffs' first and second motions to compel. The matters were taken under advisement.

After considering the motions, the matters contained therein, and the parties' respective briefs, position statements, and arguments on the motions, and having reviewed the record proper, the Court in its discretion rules on the motions as follows:

Legislative Defendants' Motion for a Protective Order

Legislative Defendants' motion seeks to prohibit Plaintiffs from deposing four Legislative Defendants and eight current or former legislators and legislative staffers, on the grounds of legislative immunity and legislative privilege.

Plaintiffs disagree with Legislative Defendants' assertions of legislative privilege and immunity, but do not oppose the entry of the requested protective order so long as the order specifies that Legislative Defendants are precluded from offering certain evidence and testimony at trial under the principle that a privilege may not be used as both a sword and a shield. Plaintiffs oppose Legislative Defendants' request to withdraw the motion as to Defendants Lewis and Hise, and request that the Court enter the protective order as to all twelve individuals originally named in the motion.

From Legislative Defendants' initial responses to Plaintiffs' first discovery requests on January 4, 2019 to March 18, 2019 – two days before the March 20 deadline (agreed to by all parties) for the completion of written discovery from the Defendants – Legislative Defendants have asserted legislative privilege. Although no privilege log has been provided, presumably Legislative Defendants have relied upon this privilege to withhold interrogatory responses and documents requested through discovery. Upon the filing of a motion for a protective order on February 5, 2019, Legislative Defendants formalized their assertion of legislative privilege for twelve named legislators and legislative staffers. The assertion of legislative privilege resulted in the cancellation of duly noticed and subpoenaed depositions of current and former legislators and legislative staffers, including Senator Hise and Representative Lewis.

Now, only two days before the deadline for completion of written discovery from Defendants and only four days before the deadline for submission of Plaintiffs' expert reports, Legislative Defendants have purported to waive legislative immunity and privilege for Representative Lewis and Senator Hise, but no others. The Court finds and concludes that to allow Legislative Defendants, who heretofore have used legislative immunity and privilege as a shield to prevent discovery by Plaintiffs, to now change positions with respect to this material matter would provide an unfair benefit to Legislative Defendants and impose an unfair detriment on Plaintiffs. Accordingly, the Court concludes that Legislative Defendants are estopped at this late stage in the discovery process from withdrawing their claim of

legislative privilege as to Defendants Lewis and Hise, and Legislative Defendants' motion for a protective order, as filed on February 5, 2019, must be granted in full.¹

Plaintiffs' First Motion to Compel

Plaintiffs' motion seeks to compel: 1) answers to interrogatories #1-4, #5, #7, #12-13, #14-18 from Plaintiffs' first set of interrogatories and #1-4 from Plaintiffs' third set of interrogatories; 2) production of a privilege log; and, 3) production of records responsive to Plaintiffs' requests for production. Legislative Defendants contend their answers to Plaintiffs' interrogatories and responses to Plaintiffs' requests for production of documents has been adequate thus far.

"Whether or not [a] party's motion to compel discovery should be granted or denied is within the trial court's sound discretion." *Wagoner v. Elkin City Sch. Bd. of Educ.*, 113 N.C. App. 579, 585, 440 S.E.2d 119, 123 (1994). "When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must (i) expressly make the claim and (ii) describe the nature of the documents,

¹ The Court takes note of the authority provided by Plaintiffs that holds that a party cannot use a privilege both as a "shield" to prevent discovery and a "sword" to present evidence or claims that relate to the privileged information. See, e.g. *State v. Buckner*, 351 N.C. 401, 410 (2000); *Qurneh v. Colie*, 122 N.C. App. 553, 558 (1996). A party therefore may not "use [] an assertion of fact to influence a decisionmaker while denying its adversary access to privileged material potentially capable of rebutting the assertion." *Favors v. Cuomo*, 285 F.R.D. 187, 199 (E.D.N.Y.) (2012). While it is premature for the Court to make rulings on evidentiary matters for trial, this Order in no way prejudices Plaintiffs from seeking to be heard at or prior to trial should Legislative Defendants offer (1) testimony from any of the twelve individuals who have asserted privilege (2) evidence or testimony that derives directly or indirectly from non-public information provided by, or non-public communications with, the twelve individuals asserting privilege, or (3) evidence or testimony that otherwise seeks to explain the legislature's intent in drawing the challenged district plans, unless such testimony or evidence is based exclusively on the public legislative record or publicly available data.

communications, or tangible things not produced or disclosed, and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.” N.C.G.S. § 1A-1, Rule 26(b)(5)(a). Rule 5.7 of the Local Rules for Civil Superior Court, Tenth Judicial District (as amended in 2015)² governs electronic discovery and requires a party producing documents in an electronic format to disclose certain information regarding custodians, non-custodial data sources, date ranges, and search methodology.

The Court, in its discretion, grants Plaintiffs’ requests in the first motion to compel. Legislative Defendants shall respond in full, subject to *bona fide* assertions of privilege or immunity, to the following interrogatories and requests for production as follows:

- Third set of interrogatories, #1-4: Legislative Defendants must identify each person who was involved in developing the district boundaries for the 2017 plans, describe the nature of their involvement, provide their affiliations, and provide the names of any entities that paid their fees or expenses. Simply referring to the record is insufficient.
- First set of interrogatories, #5: Legislative Defendants must respond to Interrogatory #5. The identities of legal counsel and consultants that provided advice to Legislative Defendants is not privileged information protected by the attorney-client privilege.
- First set of interrogatories, #12-13: Legislative Defendants must respond to Interrogatories #12-13. Per Interrogatory #12, Legislative Defendants must identify what formulas or algorithms were used, if any. Per Interrogatory #13, Legislative Defendants must identify and describe the partisanship scores or estimates as requested. The terms “formulas or algorithms” and “partisanship scores or estimates” are not vague.
- First set of interrogatories, #14-18: Legislative Defendants must respond to Interrogatories #14-18. Legislative Defendants’ response that the information requested in these interrogatories “may be ascertained from a review of the documents produced” is insufficient.

² The Local Rules for Civil Superior Court, Tenth Judicial District (as amended in 2015) can be accessed here: <https://www.nccourts.gov/assets/documents/local-rules-forms/112.pdf?XAxLgDjvtvghp9SN0U8SfgoejNvF4gmF>

- Records responsive: Legislative Defendants must produce all records responsive to Plaintiffs' requests for production. If asserting a claim of privilege, then Legislative Defendants must produce a privilege log in accordance with N.C.G.S. § 1A-1, Rule 26(b)(5)(a).
- Electronic discovery: Legislative Defendants must disclose information regarding custodians, non-custodial data sources, date ranges, and search methodology of discovery produced in electronic format in accordance with Rule 5.7 of the Local Rules for Civil Superior Court, Tenth Judicial District.

Plaintiffs' Second Motion to Compel

Plaintiffs' second motion sought to compel the identification of the home addresses of the incumbents in place at the time the 2011 and 2017 state legislative plans were adopted. Legislative Defendants initially produced a list of preferred mailing addresses, including P.O. Boxes; however, on March 14, 2019, Legislative Defendants produced the requested information. The parties now agree Plaintiffs' request for the home addresses in the second motion to compel is moot; however, Plaintiffs request costs and fees.

For the foregoing reasons, the Court, in its discretion, denies as moot Plaintiffs' request in the second motion to compel that Legislative Defendants provide the information requested in Plaintiffs' second set of interrogatories.

Conclusion

WHEREFORE, the Court, for the reasons stated herein and in the exercise of its discretion, hereby ORDERS as follows:

1. Legislative Defendants' motion for a protective order is GRANTED in full.
2. Plaintiffs' first motion to compel is GRANTED in part as follows:

- a. Legislative Defendants shall provide Plaintiffs with complete answers to Interrogatories #1-4, #5, #12-13, and #14-18 by April 3, 2019;
 - b. Legislative Defendants shall provide Plaintiffs with complete responses to Plaintiffs' Requests for Production by April 3, 2019;
 - c. If withholding documents on a claim of privilege, Legislative Defendants shall provide a privilege log by April 3, 2019; and,
 - d. At this time, the Court will hold open the issue of Plaintiffs' request for attorneys' fees and costs to consider the matter if Legislative Defendants fail to comply with the terms of this Order.
3. Plaintiffs' second motion to compel is DENIED AS MOOT in part as follows:
- a. Plaintiffs' request that Legislative Defendants provide the information requested in Plaintiffs' second set of interrogatories is denied as moot; and,
 - b. At this time, the Court will hold open the issue of Plaintiffs' request for attorneys' fees and costs to consider the matter if Legislative Defendants fail to comply with the terms of this Order.
4. The parties' February 15, 2019, stipulated proposed case management order is amended as follows:
- a. Plaintiffs' expert witness reports are due April 8, 2019; and
 - b. All other deadlines shall remain unchanged.

SO ORDERED, this the 25th day of March, 2019.



Paul C. Ridgeway, Superior Court Judge

/s/ Joseph N. Crosswhite

Joseph N. Crosswhite, Superior Court Judge

/s/ Alma L. Hinton

Alma L. Hinton, Superior Court Judge

Certificate of Service

The undersigned certifies that the foregoing was served upon all parties by depositing the same in the custody of the of the United States Postal Service, First Class postage prepaid, and by email, addressed as follows:

Edwin M. Speas, Jr.
Caroline P. Mackie
Poyner Spruill LLP
P.O. Box 1801
Raleigh, NC 27602-1801
espeas@poynerspruill.com
cmackie@poynerspruill.com
*Counsel for Common Cause,
The North Carolina Democratic Party
And the Individual Plaintiffs*

R. Stanton Jones
David P. Gersch
Elisabeth S. Theodore
Daniel F. Jacobson
Arnold & Porter Kaye Scholer, LLP
601 Massachusetts Ave. NW
Washington DC 20001-3743
Stanton.jones@arnoldporter.com
David.gersch@arnoldporter.com
Elisabeth.theodore@arnoldporter.com
Daniel.jacobson@arnoldporter.com
*Counsel for Common Cause
And for Individual Plaintiffs*

Mark E. Braden
Richard Raile
Trevor Stanley
Baker & Hostetler, LLP
Washington Square, Suite 1100
1050 Connecticut Ave., NW
Washington, DC 20036-5403
rraile@bakerlaw.com
mbraden@bakerlaw.com
tstanley@bakerlaw.com
Attorneys for Legislative Defendants

Marc E. Elias
Aria C. Branch
Perkins Coie, LLP
700 13th Street NW
Washington DC 20005-3960
melias@perkinscoie.com
ABranch@perkinscoie.com
*Counsel for Common Cause
And the Individual Plaintiffs*

Abha Khanna
Perkins Coie, LLP
1201 Third Ave., St. 4900
Seattle, WA 98101-3099
akhanna@perkinscoie.com
*Counsel for Common Cause
And the individual Plaintiffs*

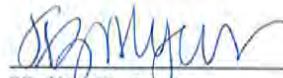
Phillip J. Strach
Michael McKnight
Alyssa Riggins
Ogletree, Deakins et al.
4208 Six Forks Rd., St. 1100
Raleigh, NC 27609
Phillip.strach@ogletree.com
Michael.mcknight@ogletree.com
Alyssa.riggins@ogletree.com
Counsel for Legislative Defendants

Stephanie A. Brennan
Amar Majmundar
Paul Cox
NC Department of Justice
P.O. Box 629
Raleigh, NC 27602
sbrennan@ncdoj.gov
amajmundar@ncdoj.gov
pcox@ncdoj.gov
*Counsel for the State of North
Carolina and members of the State
Board of Elections*

Josh Lawson
NC State Board of Elections
430 N. Salisbury Street, St. 3128
Raleigh, NC 27603-5918
joshua.lawson@ncsbe.gov
*Counsel for the State Board of
Elections*

This the 25th day of March, 2019.

John E. Branch, III
H. Denton Worrell
Nathaniel J. Pencook
Shanahan McDougal, PLLC
128 E. Hargett Street, Suite 300
Raleigh, NC 27601
jbranch@shanahanmcdougal.com
dworrellshanahanmcdougal.com
npencook@shanahanmcdougal.com
Attorneys for Defendant-Intervenors



Kellie Z. Myers
Trial Court Administrator
10th Judicial District
Kellie.Z.Myers@nccourts.org

EXHIBIT B

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

2019 MAR 11 P 3:21

18 CVS 014001

COMMON CAUSE, et al.,

WAKE CO., C.O.C.

Plaintiffs,

v.

DAVID LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR
CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON
REDISTRICTING, et al.,

Defendants.

**PLAINTIFFS' RESPONSE
TO LEGISLATIVE
DEFENDANTS' MOTION
FOR A PROTECTIVE
ORDER**

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	iii
INTRODUCTION	1
BACKGROUND	2
ARGUMENT.....	3
I. Legislative Defendants May Not Use Legislative Privilege as a Sword and a Shield.....	3
II. Plaintiffs Do Not Oppose the Protective Order if the Court Imposes Appropriate Limitations on the Evidence and Testimony That Defendants May Offer at Trial.....	5
III. In the Alternative, Plaintiffs Request the Opportunity to Challenge Legislative Defendants’ Privilege Assertions	7

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Belmont Textile Mach. Co. v. Superba, S.A.</i> , 48 F. Supp. 2d 521 (W.D.N.C. 1999).....	3
<i>Cantwell v. Cantwell</i> , 109 N.C. App. 395, 427 S.E.2d 129 (1993).....	3, 4
<i>Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections</i> , 2011 WL 4837508 (N.D. Ill. Oct. 12, 2011).	4
<i>Doe v. Nebraska</i> , 898 F. Supp. 2d 1086 (D. Neb. 2012)	4, 5
<i>Favors v. Cuomo</i> , 285 F.R.D. 187 (E.D.N.Y. 2012)	3, 4, 5
<i>League of Women Voters of Pa. v. Commonwealth</i> , No. 261 M.D. 2017.....	4, 6
<i>Qurneh v. Colie</i> , 122 N.C. App. 553, 471 S.E.2d 433 (1996).....	3
<i>State v. Buckner</i> , 351 N.C. 401, 527 S.E.2d 307 (2000)	3
<i>United States v. Bilzerian</i> , 926 F.2d 1285 (2d Cir. 1991).....	5, 7
Statutes	
N.C. Gen. Stat. § 120-133(a).....	1, 7

INTRODUCTION

Legislative Defendants have filed a motion for a protective order to preclude Plaintiffs from taking the depositions of all four Legislative Defendants and of eight other current or former legislators and legislative staffers, all on the grounds of legislative privilege and immunity. While Plaintiffs disagree with these assertions of legislative privilege and immunity, Plaintiffs do not oppose the entry of the requested protective order so long as the order specifies that Legislative Defendants will be precluded from offering certain evidence and testimony at trial under the well-established principle that a privilege may not be used as a sword and a shield. In other words, Plaintiffs ask this Court to confirm that, because Legislative Defendants have moved to block discovery into legislative intent and into the facts surrounding their adoption of the challenged maps, Legislative Defendants cannot themselves offer such evidence at trial.

In particular, the protective order should specify that Legislative Defendants may not offer (1) testimony from any of the twelve individuals who have asserted privilege, (2) evidence or testimony that derives directly or indirectly from non-public information provided by, or non-public communications with, the twelve individuals asserting privilege, or (3) evidence or testimony that otherwise seeks to explain the legislature's intent in drawing the challenged districting plans, unless such testimony or evidence is based exclusively on the public legislative record or publicly available data. If the Court is not prepared to enter such an order at this time, Plaintiffs request the opportunity to file a substantive opposition to Legislative Defendants' privilege and immunity assertions, which are overbroad under N.C. Gen. Stat. § 120-133(a).

Plaintiffs request that the Court act quickly on this motion to ensure that, if the discovery is to go forward, Plaintiffs have time to take that discovery within the time allotted under the agreed scheduling order. The parties attempted to negotiate a stipulated resolution of the

protective order, but those negotiations reached an impasse. Plaintiffs note that the discovery covered by Legislative Defendants’ motion for a protective order is distinct from the discovery at issue in Plaintiffs’ First and Second Motions to Compel, which remain pending.

BACKGROUND

On January 24, 2019, Plaintiffs served notices of depositions upon all four Legislative Defendants—Senior Chairman of the House Select Committee on Redistricting David R. Lewis, Chairman of the Senate Standing Committee on Redistricting Ralph E. Hise, Jr., Speaker of the House Timothy K. Moore, and President Pro Tempore of the Senate Philip E. Berger. *See* Legislative Defendants’ Mot. for Protective Order (“Mot.”), Exs. 1-4. Plaintiffs noticed the depositions for March 5, March 7, March 11, and March 12. Also on January 24, Plaintiffs served subpoenas for depositions and documents on eight individuals whom Legislative Defendants had identified in interrogatory responses as being involved in the 2017 redistricting process: Senator Trudy Wade, Senator Wesley Meredith, Senator John Alexander, Senator Dan Bishop, former Senator Robert Rucho, former Representative Nelson Dollar, legislative employee Mark Coggins, and former legislative employee Jim Blaine (collectively, the “non-party legislators and staff”). *See id.*, Exs. 5-12. Plaintiffs noticed the depositions of these individuals for dates between February 27 and March 20. Counsel for Legislative Defendants agreed to accept service of the subpoenas for these individuals and is representing them here.

On February 4, Legislative Defendants and the non-party legislators and staff filed a motion “for a protective order prohibiting plaintiffs from taking [their] depositions on the grounds of legislative immunity and legislative privilege.” Mot. 3. That same day, the non-party legislators and staff responded to Plaintiffs’ document subpoenas, asserting legislative privilege

and legislative immunity and refusing to produce any documents. Legislative Defendants similarly have asserted legislative privilege in response to Plaintiffs’ document requests to them.

After the motion for a protective order was filed, the parties attempted to negotiate a consensual resolution to the dispute, but those negotiations reached an impasse.

ARGUMENT

While Plaintiffs believe that Legislative Defendants’ assertions of legislative privilege and immunity are overbroad and erroneous in light of N.C. Gen. Stat. § 120-133(a), Plaintiffs do not oppose the entry of the requested protective order so long as the order specifies that Legislative Defendants will be precluded from offering certain evidence and testimony at trial that derives from, or is within the knowledge of, the individuals subject to the protective order.

I. Legislative Defendants May Not Use Legislative Privilege as a Sword and a Shield

It is hornbook law that parties cannot use a privilege as both a “shield” to prevent discovery and a “sword” to present evidence or claims that relate to the privileged information. *State v. Buckner*, 351 N.C. 401, 410, 527 S.E.2d 307, 313 (2000); *Qurneh v. Colie*, 122 N.C. App. 553, 558, 471 S.E.2d 433, 436 (1996). A party therefore may not “use[] an assertion of fact to influence the decisionmaker while denying its adversary access to privileged material potentially capable of rebutting the assertion.” *Favors v. Cuomo*, 285 F.R.D. 187, 199 (E.D.N.Y. 2012) (quotation marks omitted). As such, parties face a “choice” of either standing on the privilege or waiving it in order to advance related evidence or claims. *Cantwell v. Cantwell*, 109 N.C. App. 395, 396, 427 S.E.2d 129, 130 (1993). Where a party elects “to stand behind its privilege and refuse[s] to produce” relevant information, “that exercise of the privilege will preclude it from introducing” related evidence at trial. *Belmont Textile Mach. Co. v. Superba*,

S.A., 48 F. Supp. 2d 521, 523 (W.D.N.C. 1999). This principle applies equally to plaintiffs and defendants. *See, e.g., Cantwell*, 109 N.C. App. at 396, 427 S.E.2d a 130.

Courts have applied the sword/shield doctrine to assertions of legislative privilege.

“[C]ourts have been loath to allow a legislator to invoke the privilege at the discovery stage, only to selectively waive it thereafter in order to offer evidence to support the legislator’s claims or defenses.” *Favors*, 285 F.R.D. at 212 (citing *Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections*, 2011 WL 4837508, at *11 (N.D. Ill. Oct. 12, 2011)).

Courts have even applied the principle in redistricting lawsuits specifically, denying legislators the ability to offer certain evidence in defense of redistricting plans where those legislators blocked discovery based on legislative privilege. In the recent partisan gerrymandering challenge to Pennsylvania’s congressional districts, the legislative defendants asserted legislative privilege to preclude their depositions and other discovery related to legislative intent. The state trial court upheld the privilege assertions, blocking the requested discovery, and the plaintiffs in turn moved to preclude the defendants from introducing evidence related to legislative intent under the sword/shield doctrine. The trial court granted the motion and precluded the defendants “from offering evidence that [the plaintiffs] could not obtain in discovery due to [the] Court’s . . . order” upholding the defendants’ privilege assertions. Trial Tr. at 94, *League of Women Voters of Pa. v. Commonwealth*, No. 261 M.D. 2017 (attached as Ex. A). The court further made clear that the legislative defendants could not offer expert testimony that was based on consultations with legislative staff who had been “shielded from [the plaintiffs’] deposition efforts” on the basis of privilege. *Id.* at 32.

The district court in *Doe v. Nebraska*, 898 F. Supp. 2d 1086 (D. Neb. 2012), similarly precluded legislators from introducing evidence at trial pursuant to the sword/shield doctrine. In

Doe, a constitutional challenge to a Nebraska statute under the Ex Post Facto Clause, the plaintiffs sought to depose Nebraska legislators regarding their intent and objectives in crafting the statute. The defendants “successfully asserted legislative privileges to thwart the plaintiffs’ effort to get at the truth.” *Id.* at 1126. At trial, the plaintiffs presented evidence that the legislature had acted with impermissible intent, and when the defendants sought to challenge that evidence, the court held that they were precluded from doing so given their prior privilege assertions. “While the defendants and their lawyers were entitled to invoke [legislative privilege]” to withhold discovery, they could not then “claim [at trial] that the evidence is lacking regarding the true motives of the law-makers.” *Id.* “That is, the defendants [were] not . . . allowed to use their privilege defenses as both a sword and a shield.” *Id.*

Here, too, Legislative Defendants must face the consequences of asserting legislative privilege to block Plaintiffs from obtaining discovery. Plaintiffs do not ask this Court to impose the extent of limitations that were imposed in *Doe*, but Legislative Defendants must at a minimum be precluded from introducing evidence and testimony that Plaintiffs would have been “potentially capable of rebutting” through the discovery that Plaintiffs were denied. *Favors*, 285 F.R.D. at 199. Legislative Defendants, in other words, may not present evidence or testimony that “in fairness requires examination of protected communications” or other discovery. *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991).

II. Plaintiffs Do Not Oppose the Protective Order if the Court Imposes Appropriate Limitations on the Evidence and Testimony That Defendants May Offer at Trial

Plaintiffs do not oppose the court’s entry of the requested protective order if the court specifies that Legislative Defendants may not offer (1) testimony from any of the twelve individuals asserting legislative privilege and legislative immunity (2) evidence or testimony that derives directly or indirectly from non-public information from, or non-public communications

with, the twelve individuals asserting privilege, or (3) evidence or testimony that otherwise seeks to explain the legislature’s intent in drawing the challenged districting plans, unless that testimony or evidence is based exclusively on the public legislative record or publicly available data.

The first restriction is straightforward: Legislative Defendants cannot offer testimony from any individual whom Plaintiffs were unable to depose due to the assertions of legislative privilege and legislative immunity.

The second restriction prevents Legislative Defendants from funneling information from those twelve individuals through other witnesses, including experts. The sword/shield doctrine would serve little purpose if a party could circumvent its restrictions by relaying information from shielded witnesses to other witnesses. *See* Ex. A at 9 (explaining that legislative defendants could not introduce expert testimony based on consultations with legislative staff who had been “shielded from [the plaintiffs’] deposition efforts” by privilege assertions).¹

The third and final restriction precludes Legislative Defendants from offering evidence or testimony relating to legislative intent, unless the evidence or testimony is based exclusively on the public legislative record or publicly available data. The General Assembly’s intent in drawing the challenged plans is uniquely within the knowledge of the twelve individuals asserting legislative privilege, as Legislative Defendants have identified these individuals as the sole living persons who had any involvement in drawing the state House and state Senate districts in 2017. It would be manifestly unfair for Legislative Defendants to offer evidence or testimony purporting to explain the legislature’s intent in drawing specific districts or the maps as a whole, when Plaintiffs were denied the ability to take discovery from the persons who know

¹ This order of course would also prevent the twelve individuals from funneling information to witnesses for the Intervenor Defendants, who are closely aligned with Legislative Defendants.

the truth regarding the legislature’s actual intent. *See Bilzerian*, 926 F.2d at 1292-93 (applying sword/shield doctrine to restrict criminal defendant from offering testimony related to his “intent”). That said, Plaintiffs believe that Legislative Defendants should be permitted to present evidence and testimony related to legislative intent that is based exclusive on the public legislative record and publicly available data (*e.g.*, expert statistical analysis based on publicly available elections data).²

III. In the Alternative, Plaintiffs Request the Opportunity to Challenge Legislative Defendants’ Privilege Assertions

Given the expedited schedule in this case, Plaintiffs have decided not to oppose the motion for a protective order—and thus to forgo important discovery to which Plaintiffs are entitled—if the Court specifies that the order will carry the routine consequences set forth above. However, if the Court is not inclined to enter such a protective order at this time, then Plaintiffs will file a brief challenging the privilege and immunity assertions. The blanket assertions that have been made to prevent essentially any discovery are clearly overbroad in light of N.C. Gen. Stat. § 120-133(a). That statute waives legislative privilege over any communications between legislators and staff—and over staff entirely—in relation to redistricting legislation.

WHEREFORE, Plaintiffs do not oppose the court’s entry of the requested protective order if the court specifies that Legislative Defendants may not offer (1) testimony from any of the twelve individuals asserting legislative privilege and legislative immunity (2) evidence or testimony that derives directly or indirectly from non-public information from, or non-public

² For the second and third restrictions, the date by which to determine whether information or data is “public” or “non-public” should be November 13, 2018, the date that Plaintiffs filed the complaint in this case. That specification is necessary to prevent Defendants from selectively making certain information or data “public” now where that information might support Defendants’ defenses in this matter, while continuing to assert privilege to allow Plaintiffs to probe those defenses by deposing or obtaining documents from legislators.

communications with, the twelve individuals asserting privilege, or (3) evidence or testimony that otherwise seeks to explain the legislature's intent in drawing the challenged districting plans, unless that testimony or evidence is based exclusively on the public legislative record or publicly available data. In the alternative, Plaintiffs request the opportunity to file a substantive opposition to Legislative Defendants' assertions of legislative privilege and legislative immunity.

Respectfully submitted this the 11th day of March, 2019

POYNER SPRUILL LLP

By: 

Edwin M. Speas, Jr.
N.C. State Bar No. 4112
Caroline P. Mackie
N.C. State Bar No. 41512
P.O. Box 1801
Raleigh, NC 27602-1801
(919) 783-6400
espeas@poynerspruill.com

*Counsel for Common Cause, the North
Carolina Democratic Party, and the
Individual Plaintiffs*

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

R. Stanton Jones*
David P. Gersch*
Elisabeth S. Theodore*
Daniel F. Jacobson*
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
stanton.jones@arnoldporter.com

PERKINS COIE LLP

Marc E. Elias*
Aria C. Branch*
700 13th Street NW
Washington, DC 20005-3960
(202) 654-6200
melias@perkinscoie.com

Abha Khanna*
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
(206) 359-8000
akhanna@perkinscoie.com

*Counsel for Common Cause and the
Individual Plaintiffs*

**Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email* to the following persons:

Stephanie A. Brennan
NC Department of Justice
P.O. Box 629
114 W. Edenton St.
Raleigh, NC 27602
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
Counsel for the State Board of Elections and its members

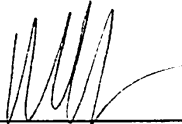
Phillip J. Strach
Michael McKnight
Alyssa Riggins
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 1100
Raleigh, NC 27609
Phillip.strach@ogletree.com
Michael.mcknight@ogletree.com
Alyssa.riggins@ogletree.com

E. Mark Braden
Richard B. Raile
Trevor M. Stanley
Baker & Hostetler, LLP
Washington Square, Suite 1100
1050 Connecticut Ave., N.W.
Washington, DC 20036-5403
rraile@bakerlaw.com
mbraden@bakerlaw.com
tstanley@bakerlaw.com
Counsel for the Legislative Defendants

John E. Branch III
H. Denton Worrell
National J. Pencook
1238 E. Hargett Street, Suite 300
Raleigh, NC 27601
jbranch@shanahanmcdougal.com
dworrell@shanahanmcdougal.com

Counsel for the Intervenor Defendants

This the 11th day of March, 2019.



Edwin M. Speas, Jr.

EXHIBIT C

STATE OF NORTH CAROLINA
COUNTY OF WAKE

COMMON CAUSE, et al.,
Plaintiffs,


v.

DAVID LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR
CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON
REDISTRICTING, et al.,
Defendants.

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

2019 JUN 21 P 2:23

WAKE CO. C.S.C.
BY 

**PLAINTIFFS' MOTION IN
LIMINE TO PRECLUDE
LEGISLATIVE
DEFENDANTS FROM
INTRODUCING EVIDENCE
OR TESTIMONY UNDER
THE SWORD AND SHIELD
DOCTRINE**

In light of Legislative Defendants’ prior assertions of legislative privilege, Plaintiffs move to preclude Legislative Defendants from offering certain evidence or testimony under the sword and shield doctrine. Specifically, Plaintiffs request an order precluding any defendant from offering: (1) testimony from any of the twelve current and former legislators and legislative staff who successfully asserted legislative privilege, (2) evidence or testimony that derives directly or indirectly from non-public information provided by, or non-public communications with, the twelve individuals who asserted legislative privilege, and (3) evidence or testimony that otherwise seeks to explain the legislature’s intent in drawing the challenged districting plans, unless such testimony or evidence is based exclusively on the public legislative record or publicly available data.

BACKGROUND

On January 24, 2019, Plaintiffs served notices of depositions upon all four Legislative Defendants—Senior Chairman of the House Select Committee on Redistricting David R. Lewis, Chairman of the Senate Standing Committee on Redistricting Ralph E. Hise, Jr., Speaker of the House Timothy K. Moore, and President Pro Tempore of the Senate Philip E. Berger. *See* Legislative Defendants’ Mot. for Protective Order (“Mot.”), Exs. 1-4. Plaintiffs noticed the depositions for early March. Also on January 24, Plaintiffs served subpoenas for depositions and documents on eight individuals whom Legislative Defendants had identified in interrogatory responses as being involved in the 2017 redistricting process: Senator Trudy Wade, Senator Wesley Meredith, Senator John Alexander, Senator Dan Bishop, former Senator Robert Rucho, former Representative Nelson Dollar, legislative employee Mark Coggins, and former legislative employee Jim Blaine (collectively, the “non-party legislators and staff”). *See id.*, Exs. 5-12.

On February 4, Legislative Defendants and the non-party legislators and staff—all represented by counsel for Legislative Defendants—moved for a protective order to block Plaintiffs from deposing all four Legislative Defendants and eight other current or former legislators and legislative staffers, on the grounds of legislative privilege and immunity. As the Court noted in its March 25, 2019 order, “[t]he assertion of legislative privilege resulted in the cancellation of duly noticed and subpoenaed depositions of current and former legislators and legislative staffers.” 3/25/19 Order at 4.

Legislative Defendants and the non-party legislators and staff also asserted legislative privilege and immunity in response to Plaintiffs’ document subpoenas and document requests. Based on their assertions of legislative privilege and immunity, the non-party legislators and staff did not produce a single document in response to Plaintiffs’ document subpoenas.

In response to the legislative privilege and immunity assertions, Plaintiffs explained that, while they disagreed with the assertions, Plaintiffs consented to entry of the requested protective order so long as the order specified that Legislative Defendants would be precluded from offering certain evidence and trial testimony that derives from, or is within the knowledge of, the individuals subject to the protective order. A week later, Legislative Defendants purported to “withdraw” the motion for a protective order as to Representative Lewis and Senator Hise. Legislative Defendants purported to take such action just two days before the close of written fact discovery from Legislative Defendants and just four days before Plaintiffs’ expert reports were due.

On March 25, 2019, this Court issued an Order declining to allow Legislative Defendants to withdraw their motion and instead granting the proposed protective order “in full.” 3/25/19 Order at 5. The Court explained that Legislative Defendants’ last-minute “change [in] positions”

with respect to legislative privilege—which they had previously used “as a shield to prevent discovery”—“would provide an unfair benefit to Legislative Defendants and impose an unfair detriment on Plaintiffs.” *Id.* at 4.

This Court noted “the authority provided by Plaintiffs that holds that a party may cannot use a privilege both as a ‘shield’ to prevent discovery and a ‘sword’ to present evidence or claims that relate to the privileged information.” 3/25/19 Order at 5 n.1. The Court concluded that it was “premature for the Court to make rulings on evidentiary matters for trial,” but made clear that its order “in no way prejudice[d] Plaintiffs from seeking to be heard at or prior to trial should Legislative Defendants offer (1) testimony from any of the twelve individuals who have asserted privilege, (2) evidence or testimony that derives directly or indirectly from non-public information provided by, or non-public communications with, the twelve individuals asserting privilege, or (3) evidence or testimony that otherwise seeks to explain the legislature’s intent in drawing the challenged districting plans, unless such testimony or evidence is based exclusively on the public legislative record or publicly available data.” *Id.* at 5 n.1. Plaintiffs now seek such an order.

ARGUMENT

Because Legislative Defendants invoked legislative privilege as a shield to block depositions and to withhold discovery about their intent in enacting the 2017 Plans, they should be precluded from introducing certain evidence or argument at trial as a sword.

It is hornbook law that parties cannot use a privilege as both a “shield” to prevent discovery and a “sword” to present evidence or claims that relate to the privileged information. *State v. Buckner*, 351 N.C. 401, 410, 527 S.E.2d 307, 313 (2000); *Qurneh v. Colie*, 122 N.C. App. 553, 558, 471 S.E.2d 433, 436 (1996). A party therefore may not “use[] an assertion of fact

to influence the decisionmaker while denying its adversary access to privileged material potentially capable of rebutting the assertion.” *Favors v. Cuomo*, 285 F.R.D. 187, 199 (E.D.N.Y. 2012) (quotation marks omitted). As such, parties face a “choice” of either standing on the privilege or waiving it in order to advance related evidence or claims. *Cantwell v. Cantwell*, 109 N.C. App. 395, 396, 427 S.E.2d 129, 130 (1993). Where a party elects “to stand behind its privilege and refuse[s] to produce” relevant information, “that exercise of the privilege will preclude it from introducing” related evidence at trial. *Belmont Textile Mach. Co. v. Superba, S.A.*, 48 F. Supp. 2d 521, 523 (W.D.N.C. 1999). This principle applies equally to plaintiffs and defendants. See, e.g., *Cantwell*, 109 N.C. App. at 396, 427 S.E.2d at 130.

The sword/shield doctrine fully applies to the assertion of legislative privilege in redistricting cases. “[C]ourts have been loath to allow a legislator to invoke the privilege at the discovery stage, only to selectively waive it thereafter in order to offer evidence to support the legislator’s claims or defenses.” *Favors v. Cuomo*, 285 F.R.D. 187, 212 (E.D.N.Y. 2012). Courts thus preclude legislators from offering certain evidence in defense of redistricting plans where those legislators blocked discovery based on legislative privilege. In the recent partisan gerrymandering challenge to Pennsylvania’s congressional districts, the legislative defendants asserted legislative privilege to preclude their depositions and other discovery related to legislative intent. The state trial court upheld the privilege assertions—and then blocked the legislative defendants from introducing evidence related to legislative intent under the sword/shield doctrine. The trial court precluded the defendants “from offering evidence that [the plaintiffs] could not obtain in discovery due to [the] Court’s . . . order” upholding the defendants’ privilege assertions. Trial Tr. at 94, *League of Women Voters of Pa. v. Commonwealth*, No. 261 M.D. 2017 (attached as Ex. A). The court further made clear that the legislative defendants

could not offer expert testimony that was based on consultations with legislative staff who had been “shielded from [the plaintiffs’] deposition efforts” on the basis of privilege. *Id.* at 32.

The district court in *Doe v. Nebraska*, 898 F. Supp. 2d 1086 (D. Neb. 2012), similarly precluded legislators from introducing evidence at trial pursuant to the sword/shield doctrine. In *Doe*, plaintiffs challenging a Nebraska statute under the Ex Post Facto Clause sought to depose Nebraska legislators regarding their intent and objectives in crafting the statute. The defendants “succcessfully asserted legislative privileges to thwart the plaintiffs’ effort to get at the truth.” *Id.* at 1126. At trial, the plaintiffs presented evidence that the legislature had acted with impermissible intent. When the defendants sought to challenge that evidence, the court held that they were precluded from doing so under the sword/shield doctrine. “While the defendants and their lawyers were entitled to invoke [legislative privilege]” to withhold discovery, they could not then “claim [at trial] that the evidence is lacking regarding the true motives of the law-makers.” *Id.* “That is, the defendants will not be allowed to use their privilege defenses as both a sword and a shield.” *Id.*

Here, too, Legislative Defendants must face the consequences of asserting legislative privilege to block Plaintiffs from obtaining discovery. Legislative Defendants must at a minimum be precluded from introducing evidence and testimony that Plaintiffs would have been “potentially capable of rebutting” through the discovery that Plaintiffs were denied. *Favors*, 285 F.R.D. at 199. Legislative Defendants, in other words, may not present evidence or testimony that “in fairness requires examination of protected communications” or other discovery. *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991).

In particular, this Court should preclude Legislative Defendants from offering (1) testimony from any of the twelve individuals who have asserted privilege, (2) evidence or

testimony that derives directly or indirectly from non-public information provided by, or non-public communications with, the twelve individuals asserting privilege, or (3) evidence or testimony that otherwise seeks to explain the legislature’s intent in drawing the challenged districting plans, unless such testimony or evidence is based exclusively on the public legislative record or publicly available data.

The first restriction is straightforward: Legislative Defendants cannot offer testimony from any individual whom Plaintiffs were unable to depose due to the assertions of legislative privilege and legislative immunity.

The second restriction prevents Legislative Defendants from funneling information from those twelve individuals through other witnesses, including experts. The sword/shield doctrine would serve little purpose if a party could circumvent its restrictions by relaying information from shielded witnesses to other witnesses. *See* Ex. A at 32 (explaining that legislative defendants could not introduce expert testimony based on consultations with legislative staff who had been “shielded from [the plaintiffs’] deposition efforts” by privilege assertions).

The third restriction precludes Legislative Defendants from offering evidence or testimony relating to legislative intent, unless the evidence or testimony is based exclusively on the public legislative record or publicly available data. The twelve individuals who asserted legislative privilege and immunity plainly possess knowledge as to the General Assembly’s intent in drawing the challenged plans—Legislative Defendants previously identified these individuals as the sole living persons who had any involvement in drawing the state House and state Senate districts in 2017. It would be manifestly unfair for Legislative Defendants to offer evidence or testimony purporting to explain the legislature’s intent in drawing specific districts or the maps as a whole, when Plaintiffs were denied the ability to take discovery from the

persons who know the truth regarding the legislature’s actual intent. *See Bilzerian*, 926 F.2d at 1292-93 (applying sword/shield doctrine to restrict criminal defendant from offering testimony related to his “intent”). Legislative Defendants should nonetheless be permitted to present evidence and testimony related to legislative intent that is based exclusively on the public legislative record and publicly available data—for example, through expert statistical analysis based on publicly available elections data.

For the second and third restrictions, the date by which to determine whether information or data is “public” or “non-public” should be November 13, 2018, the date on which Plaintiffs filed their complaint. Using that date is necessary to prevent Defendants from selectively making certain information or data “public” after the complaint was filed to support their defenses, while using privilege to block Plaintiffs from deposing or obtaining documents from legislators in order to probe those defenses. Moreover, all three restrictions should apply equally to the Intervenor Defendants and the State Defendants, to prevent Legislative Defendants from circumventing the sword and shield doctrine via the other Defendants.

CONCLUSION

For the foregoing reasons, all Defendants should be barred from offering: (1) testimony from any of the twelve current and former legislators and legislative staff who successfully asserted legislative privilege, (2) evidence or testimony that derives directly or indirectly from non-public information provided by, or non-public communications with, the twelve individuals who asserted legislative privilege, and (3) evidence or testimony that otherwise seeks to explain the legislature’s intent in drawing the challenged districting plans, unless such testimony or evidence is based exclusively on the public legislative record or publicly available data.

Respectfully submitted this the 21st day of June, 2019.

POYNER SPRUILL LLP

By: 

Edwin M. Speas, Jr.
N.C. State Bar No. 4112
Caroline P. Mackie
N.C. State Bar No. 41512
P.O. Box 1801
Raleigh, NC 27602-1801
(919) 783-6400
espeas@poynerspruill.com

*Counsel for Common Cause, the North
Carolina Democratic Party, and the
Individual Plaintiffs*

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

R. Stanton Jones*
David P. Gersch*
Elisabeth S. Theodore*
Daniel F. Jacobson*
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
stanton.jones@arnoldporter.com

PERKINS COIE LLP

Marc E. Elias*
Aria C. Branch*
700 13th Street NW
Washington, DC 20005-3960
(202) 654-6200
melias@perkinscoie.com

Abha Khanna*
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
(206) 359-8000
akhanna@perkinscoie.com

*Counsel for Common Cause and the
Individual Plaintiffs*

**Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email* to the following persons:

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to the following persons at the following addresses which are the last addresses known to me:


Amar Majmundar
Stephanie A. Brennan
Paul M. Cox
NC Department of Justice
P.O. Box 629
114 W. Edenton St.
Raleigh, NC 27602
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
pcox@ncdoj.gov
Counsel for the State Board of Elections and its members

John E. Branch III
Nathaniel J. Pencook
Andrew Brown
Shanahan Law Group, PLLC
128 E. Hargett Street, Suite 300
Raleigh, NC 27601
jbranch@shanahanlawgroup.com
npencook@shanahanlawgroup.com
abrown@shanahanlawgroup.com
Counsel for the Defendant-Intervenors

Phillip J. Strach
Michael McKnight
Alyssa Riggins
Ogletree, Deakins, Nash, Smoak & Stewart,
P.C.
4208 Six Forks Road, Suite 1100
Raleigh, NC 27609
Phillip.strach@ogletree.com
Michael.mcknight@ogletree.com
Alyssa.riggins@ogletree.com
Counsel for the Legislative Defendants

E. Mark Braden
Richard B. Raile
Trevor M. Stanley
Baker & Hostetler, LLP
Washington Square, Suite 1100
1050 Connecticut Ave., N.W.
Washington, DC 20036-5403
rraile@bakerlaw.com
mbraden@bakerlaw.com
tstanley@bakerlaw.com
Counsel for the Legislative Defendants

This the 21st day of June, 2019.



Edwin M. Speas, Jr.

EXHIBIT D

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Case No. 18 CVS 014001

COMMON CAUSE; *et al.*

Plaintiffs,

v.

DAVID R. LEWIS, *et al.*

Defendants.

)
)
) **LEGISLATIVE DEFENDANTS’**
) **RESPONSE TO MOTION IN LIMINE**
) **TO PRECLUDE LEGISLATIVE**
) **DEFENDANTS FROM**
) **INTRODUCING EVIDENCE OR**
) **TESTIMONY UNDER THE SWORD**
) **AND SHIELD DOCTRINE**
)
)
)

Plaintiffs’ motion regarding the sword and shield doctrine is breathtakingly overbroad and should be denied.

Plaintiffs seek to bar any legislator from testifying or offering any evidence at trial regardless of whether the legislator asserted legislative privilege. This is despite the fact that well before the discovery period expired, legislative defendants disclosed numerous legislators with knowledge of the redistricting process, criteria, and districts drawn and enacted in 2017. None of those legislators has asserted legislative privilege; indeed, despite having this information for months, plaintiffs never attempted to subpoena or depose them. Plaintiffs should not now be able to hide facts known by these legislators from the court.

FACTUAL BACKGROUND

On January 24, 2019, plaintiffs served numerous deposition notices and/or subpoenas for the legislative defendants and others covered by legislative privilege. These notices and subpoenas were limited to the following: Rep. Lewis, Sen. Hise, Speaker Moore, Sen. Berger, Sen. Wade, Sen. Meredith, Sen. Alexander, Sen. Bishop, former Sen. Rucho, former Rep. Dollar, Mark Coggins, and Jim Blaine.

On February 4, 2019, legislative defendants served a motion for protective order regarding the deposition notices issued by plaintiffs. The non-parties also served objections to the deposition and document subpoenas on the same day.

After the motion for protective order was served, the parties thereafter began discussions and negotiations regarding a resolution to the privilege issue. While the parties were discussing the legislative privilege issue, plaintiffs filed their first motion to compel on February 19, 2019. Plaintiffs allowed the motion to sit in the court file for nearly a month before taking appropriate action to have it heard by the court.

On March 25, 2019, the court entered an order granting plaintiffs' first motion to compel in part. Part of the order required supplementation of certain interrogatory answers by April 3, 2019.

Legislative defendants complied with the order. As pertinent here, on April 3, 2019, legislative defendants supplemented their answer to Interrogatory No. 1, which sought the identification of persons who were involved in the "drawing or revising [of] district boundaries for the 2017 Plans, or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans." See Legislative Defendants' Second Supplemental Objections and Responses to Plaintiffs' First Set of Interrogatories (4/3/19), attached as Exhibit A.

The supplemental response stated:

In addition, the State Senate and State House redistricting committee members were involved in the redistricting, including specifically the Republican members of each committee. The Republican members of the State Senate committee were: Sen. Ralph Hise, Chairman, Sen. Dan Bishop, Sen. Harry Brown,

Sen. Warren Daniel, Sen. Kathy Harrington, Sen. Brent Jackson, Sen. Michael V. Lee, Sen. Paul Newton, Sen. Bill Rabon, and Sen. Trudy Wade.

The Republican members of the State House committee were: Rep. David Lewis, Senior Chairman, Rep. Nelson Dollar, Chairman, Rep. John Bell, Vice Chairman, Rep. Sarah Stevens, Vice Chairman, Rep. John Szoka, Vice Chairman, Rep. Jon Torbett, Vice Chairman, Rep. Bill Brawley, Rep. Justin Burr, Rep. Ted Davis, Rep. Jimmy Dixon, Rep. Josh Dobson, Rep. Andy Dulin, Rep. Holly Grange, Rep. Destin Hall, Rep. Jon Hardister, Rep. Kelly Hastings, Rep. Julia Howard, Rep. Pat Hurley, Rep. Linda Johnson, Rep. Bert Jones, Rep. Jonathan Jordan, Rep. Chris Malone, Rep. David Rogers, Rep. Jason Saine, and Rep. Michael Speciale.

The Republican members of the State House and State Senate redistricting committees *have knowledge of the redistricting process, criteria, and districts drawn and enacted in 2017.*

Ex. A. at 4-5 (emphasis added).

Plaintiffs did not seek to subpoena or depose any of the individuals identified in legislative defendants' supplemental response. The deadline for written discovery expired on April 17, 2019 and the deadline for fact witness discovery expired May 17, 2019.

ARGUMENT

Plaintiffs' motion is overbroad and rests on a factually incorrect proposition.¹ Plaintiffs claim that the twelve individuals who asserted legislative privilege in February

¹ Legislative defendants do not intend to offer any evidence, directly or indirectly, from the individuals who were the subject of the February protective order motion. However, legislative

2019 were identified by legislative defendants as the “sole living persons who had any involvement in drawing the state House and state Senate districts in 2017.” Motion at 6. That is demonstrably false. On April 3, 2019, legislative defendants identified at least 30 additional persons who were involved in the 2017 redistricting. Legislative defendants also explicitly described their knowledge as of “the redistricting process, criteria, and districts drawn and enacted in 2017.”

Thus, as of April 3, 2019, plaintiffs were on notice of additional individuals they should seek to depose or subpoena in order to obtain all facts known by relevant legislators about the 2017 redistricting. Plaintiffs failed to do so. It would be manifestly unjust for the legislative defendants to be barred from offering facts about the relevant redistricting plans from legislators who have never been subpoenaed and, more importantly, have never asserted legislative privilege in this matter. These persons, having not invoked the shield of the privilege, may not now be barred from testifying through plaintiffs’ use of this motion as a sword against them.

CONCLUSION

For the foregoing reasons, plaintiffs’ motion regarding the sword and shield doctrine should be denied.

defendants reserve the right to seek leave to call such individuals as witnesses at trial to the extent necessary to defend legislative defendants against any baseless accusations allowed at trial that are related to the files produced by Stephanie Hofeller Lizon.

This the 1st day of July, 2019.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: 
Phillip J. Strach
N.C. State Bar No. 29456
Thomas A. Farr
N.C. State Bar No. 10871
Michael McKnight
N.C. State Bar No. 36932
phil.strach@ogletreedeakins.com
tom.farr@ogletreedeakins.com
michael.mcknight@ogletreedeakins.com
4208 Six Forks Road, Suite 1100
Raleigh, North Carolina 27609
Telephone: (919) 787-9700
Facsimile: (919) 783-9412
Counsel for the Legislative Defendants

BAKER & HOSTETLER, LLP

E. Mark Braden*
(DC Bar #419915)
Richard B. Raile*
(VA Bar # 84340)
Trevor M. Stanley*
(VA Bar # 77351)
Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5403
Telephone: (202) 861-1500
Facsimile: (202) 861-1783
Counsel for Legislative Defendants
**admitted pro hac vice*

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing in the above titled action upon all other parties to this cause by:

- ☐ Hand delivering a copy hereof to each said party or to the attorney thereof;
- ☐ Transmitting a copy hereof to each said party via facsimile transmittal;
- ☒ By email transmittal;
- ☐ Depositing a copy here of, first class postage pre-paid in the United States mail, properly addressed to:

Edwin M. Speas, Jr.
Caroline P. Mackie
P.O. Box 1801
Raleigh, NC 27602-1801
(919) 783-6400
espeas@poynerspruill.com

*Counsel for Common Cause, the North
Carolina Democratic Party, and the
Individual Plaintiffs*

John E. Branch, III
Nate Pencook
128 E. Hargett St, Suite 300
Raleigh, NC 27601
(919)856-9494
jbranch@shanahanlawgroup.com
Counsel for the Intervenor-Defendants

R. Stanton Jones
David P. Gersch
Elisabeth S. Theodore
Daniel F. Jacobson
601 Massachusetts Ave. NW
Washington, DC 20001-3761
(202) 942-5000
Stanton.jones@arnoldporter.com

Marc E. Elias
Aria C. Branch
700 13th Street NW
Washington, DC 20005-3960
(202) 654-6200
melias@perkinscoie.com

Abha Khanna
1201 Third Avenue
Suite 4900
Seattle, WA 98101-3099
(206) 359-8000

*Counsel for Common Cause and the
Individual Plaintiffs*

This the 1st day of July, 2019.


Phillip Strach, NC Bar No. 29456

EXHIBIT E

IN THE NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

* * * * *

COMMON CAUSE, et al,)	WAKE COUNTY
Plaintiffs,)	18 CVS 14001
)	
versus)	
)	
Representative DAVID R LEWIS,)	
in his official capacity as Senior)	VOLUME VIII OF X
Chairman of the House Select)	Pages 1695-1901
Committee on Redistricting, et al,)	
Defendants.)	

* * * * *

TRANSCRIPT

Wednesday, July 24, 2019

* * * * *

Transcript of proceedings in the General Court of Justice, Superior Court Division, Wake County, Hillsborough Street, Raleigh, North Carolina, held on July 23, 2019, at Campbell Law School, Hillsborough Street, Raleigh, North Carolina, before the Honorable Paul C. Ridgeway, Joseph N. Crosswhite and Alama L. Hinton, Judges Presiding.

APPEARANCES:

Denise St. Clair, RPR, CRR, CRC
Official Court Reporter
N.C. Administrative Office of the Courts
(570) 236-9679
denise.r.stclair@nccourts.org

John Bell - Direct by Ms. McKnight

4/24/2019 Volume VIII

10:59:24 1 Am I right to understand, Representative Bell, that
10:59:28 2 your on House District is located within this county grouping?

10:59:32 3 A. Yes.

10:59:32 4 Q. That's House District 10 on the eastern side?

10:59:37 5 A. Correct.

10:59:40 6 Q. Now, to frame this for the Court, Plaintiffs concede
10:59:45 7 in their Complaint that House Districts 21 and 22 were redrawn
10:59:51 8 by the special master. And Plaintiffs do not make any
11:00:00 9 allegations about your own district, House District 10. So,
11:00:05 10 therefore, our discussion today is going to focus on the
11:00:09 11 remaining House districts. Those are Districts 26, 28, 51,
11:00:19 12 and 53.

11:00:21 13 Now, looking at those four House districts,
11:00:28 14 understanding that this is your own county grouping, I have a
11:00:32 15 question for you about a point that Plaintiffs allege. They
11:00:36 16 allege that the General Assembly cracked the Democratic
11:00:40 17 pockets of Johnston, Harnett and Lee Counties into four
11:00:47 18 separate districts -- those are Districts 26, 28, 53 and 51 --
11:00:56 19 so that none of these four districts would lean towards
11:01:02 20 Democrats. I was quoting there from the first amended
11:01:05 21 Complaint at paragraphs 136 through 137.

11:01:12 22 Do you agree, Representative Bell, that Democratic
11:01:15 23 pockets of Johnston, Harnett and Lee Counties were cracked
11:01:22 24 into four separate districts?

11:01:24 25 MR. JONES: Objection, Your Honor. The

Denise St. Clair, RPR, CRR, CRC

Official Court Reporter

John Bell - Direct by Ms. McKnight

4/24/2019 Volume VIII

11:01:28 1 sword/shield doctrine, which we've briefed and already have an
11:01:33 2 in limine ruling from this Court, precludes Legislative
11:01:35 3 Defendants from introducing any evidence or testimony, and I'm
11:01:41 4 just reading from the Court's in limine order: Any evidence
11:01:45 5 or testimony that derives directly or indirectly from
11:01:49 6 nonpublic information provided by our communications with the
11:01:54 7 legislators who have invoked legislative privilege or any
11:01:58 8 evidence or testimony otherwise seeking to explain the General
11:02:01 9 Assembly's intent in drawing any of these districts, unless
11:02:05 10 such testimony or evidence is based exclusively on the public
11:02:10 11 legislative record or publicly available data, and I don't
11:02:13 12 believe there's been any foundation laid as to what the basis
11:02:16 13 for this witness' testimony is going to be, to the extent the
11:02:21 14 basis is anything other than exclusively publicly available
11:02:24 15 legislative record or other publicly available data, it's
11:02:27 16 clearly barred by the Court's in limine ruling on the
11:02:31 17 sword/shield doctrine.

11:02:32 18 THE COURT: All right.

11:02:32 19 MS. MCKNIGHT: Yes, Your Honor. So what
11:02:34 20 Plaintiffs' counsel is quoting from is the Court's order in
11:02:38 21 March. I'm looking at it right here.

11:02:40 22 MR. JONES: No, that's not right. I was quoting
11:02:42 23 from the Court's order a couple days ago.

11:02:45 24 THE COURT: Let's move on.

11:02:47 25 MS. MCKNIGHT: Okay. Sure. And I'd welcome him to

Denise St. Clair, RPR, CRR, CRC

Official Court Reporter

John Bell - Direct by Ms. McKnight

4/24/2019 Volume VIII

11:02:50 1 speak when it's his turn.

11:02:52 2 For now, I focus on the Court's March order, in
11:02:55 3 which in a footnote the Court was responding to a motion by
11:02:59 4 Plaintiffs related to legislative privilege.

11:03:02 5 The first issue is that we are not providing the
11:03:06 6 Court with testimony from any of the 12 individuals who
11:03:10 7 asserted privilege in this case. Plaintiffs, I'm sure, would
11:03:14 8 concede that Representative Bell did not assert legislative
11:03:19 9 privilege.

11:03:19 10 Second, I am not eliciting testimony about the
11:03:23 11 legislature's intent; rather, as I've already laid the
11:03:28 12 foundation for, I am asking Representative Bell about the
11:03:31 13 county grouping in which his own district resides. Earlier
11:03:36 14 today before the break, he laid a foundation for why he knows
11:03:39 15 about both his area and the politics related to that area,
11:03:46 16 whether -- and the composition of his district.

11:03:50 17 Now, another important point, the Court issued a
11:03:53 18 summary ruling on July 10 from the July 10 hearings where it
11:03:58 19 stated, quote, Legislative Defendants are not precluded from
11:04:03 20 offering evidence from legislators who have not asserted
11:04:11 21 legislative privilege. That is what we are offering now.
11:04:13 22 Again, we are not offering evidence of intent. We are
11:04:16 23 offering evidence testimony from Representative Bell based on
11:04:19 24 his own experience and understanding of his district.

11:04:22 25 MR. JONES: Your Honors --

Denise St. Clair, RPR, CRR, CRC

Official Court Reporter

John Bell - Direct by Ms. McKnight

4/24/2019 Volume VIII

11:04:23 1 Are you finished?

11:04:25 2 MS. MCKNIGHT: Yes.

11:04:26 3 MR. GERSCH: I apologize for speaking out of turn
11:04:28 4 before.

11:04:29 5 Just to clarify. I was reading earlier from the
11:04:32 6 Court's order on outstanding pretrial motions, which is dated
11:04:38 7 July 17th. That's just a few days ago. This is the Court's
11:04:41 8 in limine ruling granting our motion in limine on this exact
11:04:45 9 issue. And it says exactly the things that I read, including
11:04:49 10 that Legislative Defendants are precluded from putting on any
11:04:53 11 evidence or testimony about the General Assembly's intent
11:04:56 12 unless it is based exclusively on the public legislative
11:05:00 13 record or publicly available data.

11:05:02 14 And to be clear, the question of whether these
11:05:05 15 districts are -- whether the Democratic voters are cracked,
11:05:09 16 that is absolutely a question that goes to intent. Cracking
11:05:13 17 and packing voters is intentional partisan gerrymandering.
11:05:17 18 That's what this whole case is about.

11:06:22 19 THE COURT: We're going to sustain the objection.

11:06:25 20 He is a person with presumably personal knowledge
11:06:29 21 of this geographic area. He resides in this cluster. He's
11:06:33 22 run for office in this cluster. He can certainly testify
11:06:36 23 about his personal experience as to where Democrats are
11:06:39 24 located, where Republicans are located, but we agree with the
11:06:44 25 Plaintiffs that the use of the term "cracked" is directly tied

John Bell - Direct by Ms. McKnight

4/24/2019 Volume VIII

11:06:50 1 to an intent of a map drawer, as we've been using it
11:06:55 2 throughout this trial. Whether something is "cracked" or
11:06:57 3 "packed" is a term of art that we believe connotes intent this
11:07:02 4 time. But if you are talking about geography, political
11:07:03 5 geography in a cluster, it's based on his personal
11:07:09 6 observation, that would be permitted.

11:07:13 7 MS. MCKNIGHT: Thank you, Your Honor.

11:07:19 8 Q. Now, Representative Bell, looking at the map on page
11:07:23 9 38, again, focusing on Districts 28, 26, 53 and 51, would you
11:07:31 10 say you are familiar with the districts, the geographic area
11:07:37 11 that makes up Districts 28, 26, 53 and 51?

11:07:43 12 A. I'm familiar.

11:07:44 13 Q. Okay. Are you familiar with some of the political
11:07:47 14 makeup of those districts?

11:07:50 15 A. Yes, some of them.

11:07:55 16 Q. And do you believe -- and here I ask you to take
11:07:58 17 care. I am not interested in any intent of the legislature.
11:08:02 18 I am focused on your belief as a Representative from this area
11:08:08 19 understanding the makeup of these districts. Do you
11:08:11 20 believe -- and let me step back.

11:08:14 21 Are you able to identify for the Court the areas of
11:08:18 22 Johnston, Harnett and Lee Counties on this map?

11:08:22 23 A. Yes.

11:08:22 24 Q. Where are those counties?

11:08:25 25 A. District 26 and 28 would be Johnston County, 53

EXHIBIT F

TRIAL - VOLUME I

32

1 for certain whether it's happened, and can I
2 use it as a basis to exclude Dr. Gimpel's
3 testimony?

4 MR. CELLA: Your Honor, I believe
5 that what you do know from the record that
6 we've provided is that some information --

7 THE COURT: Well, I understand
8 that. I understand that.

9 My question is -- I find -- I think
10 it would be incredibly compelling if, as a
11 matter of fact, Legislative Respondents'
12 experts have been consulting with
13 nontestifying consultants who you sought to
14 depose but then were shielded. I think that
15 would be an incredibly compelling argument
16 to seek to preclude their experts from
17 testifying.

18 My question is, Is that the argument
19 that you're making? Are you -- are you
20 asserting and are you able to prove that the
21 Legislative Respondents' experts have been
22 consulting with individuals who were
23 shielded from your deposition efforts?

24 MR. CELLA: Your Honor, what we're
25 asserting is that through counsel --

TRIAL - VOLUME I

93

1 THE COURT: Thank you.

2 MR. TUCKER: Thank you.

3 THE COURT: Okay. First is
4 Petitioners' motion to exclude or limit
5 Intervenors' testimony. I'm going to grant
6 motion.

7 As far as the witnesses that the
8 Intervenors are going to call, I'm going to
9 grant the motion and preclude the testimony
10 of a potential -- or of an existing
11 Congressional candidate.

12 The reason why is because I don't
13 think I need an existing Congressional
14 candidate to inform the Court as to how
15 prejudicial a change in the maps will be.

16 I think everybody understands that
17 if the maps change, that that will certainly
18 change who can or cannot run for office and
19 the corresponding burden associated with
20 that.

21 In reality, I'll say, anecdotally,
22 I'm not sure it changes who can or cannot
23 run, because I don't think you need to be a
24 resident of your Congressional district to
25 run for Congress. With that being said, I

TRIAL - VOLUME I

94

1 understand the practical burden associated
2 with being a carpetbagger, so to speak.
3 But, nonetheless, I don't think we need any
4 testimony on that particular inconvenience.

5 I also -- I will also limit the
6 number of witnesses that can testify as
7 party chairs and the number of witnesses
8 that can testify as so-called "Republicans
9 at large." The Intervenors can present the
10 testimony of one party chair and one
11 Republican at large, but the rest of the
12 testimony seems, to me, to be duplicative.

13 So in that regard, that motion will
14 be granted.

15 Next is Petitioners' motion to limit
16 or preclude Legislative Respondents from
17 presenting evidence or argument about
18 intent, motives and activity in enacting the
19 2011 Plans.

20 I'm going to grant that motion to
21 the extent that it seeks to bar
22 Legislative Respondents from offering
23 evidence that Petitioners could not obtain
24 in discovery due to this Court's
25 November 22nd, 2017 order regarding the

TRIAL - VOLUME I

95

1 speech and debate clause, a provision in the
2 Pennsylvania Constitution.

3 As far as the request to limit
4 argument, that's -- we'll wait to see what
5 argument they want to have. But I was
6 concerned in the motion there was some
7 suggestion that they could -- that the
8 Legislative Respondents will be precluded
9 from making any arguments about the evidence
10 that the Petitioners might produce, and that
11 seemed to be overbroad. So we'll deal with
12 that more on a case-by-case basis.

13 But as far as the speech and debate
14 immunity and sword and shield argument, I
15 think the order I just provided on the
16 record adequately addresses Petitioners'
17 concerns.

18 The next motion is Petitioners'
19 motion to exclude the testimony of
20 Dr. Wendy Cho, critical to the expert report
21 of Dr. Chen. I'm going to deny that motion.

22 Next is Plaintiffs' motion to
23 exclude Dr. Gimpel's expert testimony
24 regarding the effect of the 2011 Plans.

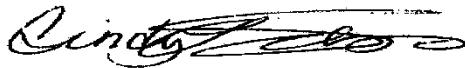
25 The Court has already accepted the

CERTIFICATE

321

COMMONWEALTH OF PENNSYLVANIA:

I, Cindy L. Sebo, a court reporter within
and for the Jurisdiction aforesaid, do hereby certify
that the foregoing proceeding were pursuant to notice,
at the time and place indicated; that the testimony
of said was correctly recorded in machine shorthand
by me and thereafter transcribed under my supervision
with computer-aided transcription; that the proceedings
are true record of the testimony given; and that
I am neither of counsel nor kin to any party in said
action, nor interested in the outcome thereof.



Cindy L. Sebo, RMR, CRR, RPR, CSR,
CCR, CLR, RSA, LiveDeposition
Authorized Reporter, and Notary Public

EXHIBIT G

TRANSCRIPTION OF AUDIO FILE
NORTH CAROLINA HOUSE COMMITTEE
ON REDISTRICTING
OCTOBER 5, 2021

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

1 sure what we can do with the technology, but we are
2 absolutely happy to look into what our options are,
3 and report that back to the chair.

4 REPRESENTATIVE HAWKINS: Okay. I also
5 heard you were Erika Churchill, and you can do all
6 things, but just putting that out there.

7 MS. CHURCHILL: Speaking French is not one
8 of those things.

9 REPRESENTATIVE HAWKINS: Okay. 10-4. Just
10 --

11 CHAIRMAN HALL: I believe she said not yet.

12 REPRESENTATIVE HAWKINS: Follow up,
13 Mr. Chairman.

14 VICE CHAIR SAINÉ: You're recognized for a
15 follow-up.

16 REPRESENTATIVE HAWKINS: And this is just,
17 you know, full transparency, Mr. Chairman, so that
18 the public can know that we're, you know, working
19 with all cards up. Is there, you know, any -- I
20 want to make sure that there have been no maps drawn
21 outside of this building that any of us have been
22 privy to. Can we say that unequivocally that that's
23 been the case?

24 CHAIRMAN HALL: I can't speak for other
25 members of this committee. What I'll say is that I

1 have not contributed to the drawing of any map, at
2 all.

3 REPRESENTATIVE HAWKINS: Awesome. Thank
4 you, Mr. Chair.

5 VICE CHAIR SAINÉ: Thank you.
6 Representative Warren.

7 REPRESENTATIVE WARREN: Thank you. I
8 propose this to the Chair, but probably going to
9 deflect it to Ms. Churchill. Can you explain what
10 the matrix is on page 2 of this stack of maps?

11 VICE CHAIR SAINÉ: Ms. Churchill.

12 REPRESENTATIVE WARREN: I knew it. She can
13 do anything.

14 CHAIRMAN HALL: When we're using the word
15 "matrix," generally I'm going to go ahead and
16 deflect that one on over.

17 MS. CHURCHILL: So, Representative Warren,
18 I'm not sure that it is a matrix in the form that
19 many people think of when you say that word. But it
20 was our attempt to keep up with how the group from
21 Duke was allocating the options to create the eight
22 different combinations for a fully assigned
23 statewide map.

24 So when you see the A1 option in the Duke
25 House 01 through 04, that is associated with the

1 CERTIFICATE OF TRANSCRIPTIONIST

2 I certify that the foregoing is a true and
3 accurate transcript of the digital recording
4 provided to me in this matter.

5 I do further certify that I am neither a
6 relative, nor employee, nor attorney of any of the
7 parties to this action, and that I am not
8 financially interested in the action.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Julie Thompson, CET-1036

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 015426

NORTH CAROLINA LEAGUE, OF
CONSERVATION VOTERS, INC., *et al.*,
Plaintiffs

and

COMMON CAUSE,
Plaintiff-Intervenor,

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, *et*
al.,
Defendants.

Filed this the 24th day of December, 2021
with the Honorable A. Graham Shirley Pursuant
to Rule 5(e) of the North Carolina Rule of Civil
Procedure

D62

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 500085

REBECCA HARPER, *et al.*,
Plaintiffs

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, *et*
al.,
Defendants.

**ORDER ON PRESIDENT *PRO TEMPORE* PHILIP E. BERGER'S, SENATOR
WARREN DANIEL'S, SENATOR PAUL NEWTON'S, AND SPEAKER TIMOTHY K.
MOORE'S MOTION FOR A PROTECTIVE ORDER**

THIS MATTER came before the undersigned three-judge panel upon the Motion for
Protective Order Quashing Notices of Deposition of President *Pro Tempore* Philip E. Berger,
Senator Warren Daniels, Senator Paul Newton, and Speaker Timothy K. Moore, filed by

President *Pro Tempore* Philip E. Berger, Senator Warren Daniels, Senator Paul Newton, and Speaker Timothy K. Moore (collectively, “Movants”) pursuant to Rules 7(b) and 26(c) of the North Carolina Rules of Civil Procedure on December 22, 2021.

Procedural and Factual Background

In this litigation, Plaintiffs seek a declaration that the North Carolina Congressional, North Carolina Senate, and North Carolina House of Representatives districts established by an act of the General Assembly in 2021, N.C. Sess. Laws 2021-174 (Senate Bill 750), 2021-173 (Senate Bill 739), and 2021-175 (House Bill 976), violate the rights of Plaintiffs under the North Carolina Constitution. Plaintiffs seek to enjoin the future use of the 2021 congressional and state legislative districts.

On December 13, 2021, after receiving an order from the Supreme Court of North Carolina directing this Court to resolve all Plaintiffs’ claims on the merits by January 11, 2022, this Court entered a Case Scheduling Order giving the parties until December 31, 2021 to conduct any depositions.

On December 14, 2021, Harper Plaintiffs served notices of deposition to President *Pro Tempore* Philip E. Berger, Senator Warren Daniels, Senator Paul Newton, and Speaker Timothy K. Moore. In response, Movants asserted a legislative privilege from being called to testify at the noticed depositions, and on December 22, 2021, Movants filed the present motion, requesting this Court to enter a protective order providing that the depositions sought by Harper Plaintiffs’ Notices of Depositions for Movants not be had based on the grounds that (1) each of the Movants is entitled to legislative immunity, and (2) the willingness of non-moving Legislative Defendants to submit to depositions renders depositions of Movants unnecessary.

Harper Plaintiffs submitted a written response to the motion on December 23, 2021.

The Movants and Harper Plaintiffs have informed the Court of their respective positions on the Motion, and the matter is now ripe for resolution by the Court.

Movants' Motion for Protective Order

After considering the Movants' Motion and the responses to that motion, as well as the matters contained therein, the Court, in its discretion, rules upon Movants' motion as follows:

Before the Court is one motion – Movants' Motion for Protective Order based upon an assertion of legislative privilege. “Parties may obtain discovery regarding any matter, *not privileged*, which is relevant to the subject matter involved in the pending action” N.C.G.S. § 1A-1, Rule 26(b)(1) (emphasis added). As Movants argue in their motion, this Court “[u]pon motion by a party or by the person from whom discovery is sought, and for good cause shown . . . may make any order which justice requires to protect a party or person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense.” N.C.G.S. 1A-1, Rule 26(c). “Individuals . . . are entitled to absolute immunity for all actions taken in the sphere of legitimate legislative activity” and, once asserted, it “shield[s] the individual from the consequences of the litigation results and provide[s] a testimonial privilege.” *Northfield Dev. Co. v. City of Burlington*, 136 N.C. App. 272, 281-82, 523 S.E.2d 743, 749, *aff'd in part, review dismissed in part on other grounds*, 352 N.C. 671, 535 S.E.2d 32 (2000). *Northfield* makes clear that **individuals** are entitled to the immunity and have a testimonial privilege. *Id.* The defendants in this case are separately named and are individual parties; one legislator invoking the privilege does not invoke the testimonial privilege for all legislators. The question in *Common Cause v. Lewis* was whether two individual defendants who, along with ten other individuals who had asserted the legislative privilege throughout the majority of a discovery period, could withdraw from a Motion for

Protective order at the last minute in order to waive the privilege. As a result of their earlier assertion of the privilege their depositions had been cancelled. The court held that the two individual defendants in *Common Cause* were estopped from withdrawing from the Motion for Protective order as allowing them to withdraw at such a late stage would work an unfair advantage or result. Such is not the case here and the assertion of legislative privilege constitutes good cause under Rule 26(c) to warrant the issuance of the requested protective order.

Nothing in this Order should be construed as a limitation on the ability of Representative Hall or Senator Hise to waive their personal legislative privilege and testify at deposition or at trial.

Conclusion

WHEREFORE, the Court, for the reasons stated herein and in the exercise of its discretion and for good cause shown, hereby ORDERS that Movants' Motion for Protective Order is GRANTED and President *Pro Tempore* Philip E. Berger, Senator Warren Daniels, Senator Paul Newton, and Speaker Timothy K. Moore shall not be called to testify at the noticed depositions.

SO ORDERED, this the 24 day of December, 2021.



A. Graham Shirley, Superior Court Judge

/s/ Nathaniel J. Poovey

Nathaniel J. Poovey, Superior Court Judge

/s/ Dawn M. Layton

Dawn M. Layton, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission addressed as follows:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Harper Plaintiffs

Stephen D. Feldman
Adam K. Doerr
Erik R. Zimmerman
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
adoerr@robinsonbradshaw.com
ezimmerman@robinsonbradshaw.com
Counsel for NCLCV Plaintiffs

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Jeffrey Loperfido
SOUTHERN COALITION FOR
SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org
jeffloperfido@scsj.org
Counsel for Common Cause Plaintiff-Intervenor

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
NELSON MULLINS RILEY &
SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Phillip.strach@nelsonmullins.com
Tom.farr@nelsonmullins.com
Alyssa.riggins@nelsonmullins.com
Counsel for Legislative Defendants

Terence Steed
Amar Majmundar
Stephanie A. Brennan
NORTH CAROLINA DEPARTMENT
OF JUSTICE
Post Office Box 629
Raleigh, NC 27602
tsteed@ncdoj.gov
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
Counsel for State Board Defendants

Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 24th day of December 2021.

/s/ Kellie Z. Myers
Kellie Z. Myers
Trial Court Administrator
10th Judicial District
Kellie.Z.Myers@nccourts.org

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 21 CVS 015426
No. 21 CVS 500085

NORTH CAROLINA LEAGUE OF CONSERVATION
VOTERS, INC., *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

COMMON CAUSE,

Plaintiff,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

***HARPER PLAINTIFFS’
MOTION TO COMPEL
RESPONSES TO SECOND
SET OF
INTERROGATORIES AND
FIRST SET OF REQUESTS
FOR PRODUCTION***

Pursuant to North Carolina Rule of Civil Procedure 37, *Harper* Plaintiffs move to compel responses to their Second Set of Interrogatories and their First Set of Requests for Production to Legislative Defendants. Those discovery requests seek information about the enacted 2021 Plans that is the mirror image of the information this Court ordered *NCLCV* Plaintiffs to produce with respect to their “optimized maps,” namely, information about who participated in drawing the maps, as well as inputted and outputted data associated with the maps, including any analysis of each map’s characteristics. Plaintiffs request that the Court order Legislative Defendants to produce this information by December 28 at 9 a.m.

BACKGROUND

In its December 20, 2021 order on Legislative Defendants’ motion for reconsideration, this Court ordered *NCLCV* plaintiffs, by December 23 at 5 p.m., to “identify any and all persons who took part in drawing or participated in the computerized production of the Optimized Maps,” and to produce to Legislative Defendants “the method and means by which the Optimized Maps were formulated and produced, including, but not limited to all source code, source data, input parameters, and all outputted data associated with the Optimized Maps.” 12/20/21 Order at 4. The Court explained that, while such data were not proper *expert* discovery, they were properly the subject of *fact* discovery because *NCLCV* Plaintiffs had requested that the Court order use of the Optimized Maps.

The next morning, *Harper* Plaintiffs served discovery requests seeking the same information about the enacted 2021 Plans. *See* Exs. A, B. In particular, *Harper* Plaintiffs issued interrogatories asking Legislative Defendants to identify all persons who took part in drawing the 2021 Plans in any way, including by advising Legislative Defendants on those plans, and including any outside consultants or advisors. Ex. A at 4. *Harper* Plaintiffs also sought all

documents or data that Legislative Defendants or others who participated in the mapdrawing relied on, including in particular all source or inputted data and all analysis. Ex. A at 4 (interrogatory requesting identification of such material); Ex. B at 4 (request for production of such material). *Harper* Plaintiffs sought this information by December 23 at 5 p.m., the same deadline that the Court gave to the *NCLCV* Plaintiffs.

Legislative Defendants failed to respond. On December 24, Plaintiffs wrote to ask Legislative Defendants why they had failed to respond, noting that the information sought was the same information that the Court had ordered the *NCLCV* Plaintiffs to produce concerning their Optimized Maps, and asking if Legislative Defendants intended to invoke legislative privilege. Legislative Defendants responded via email that, under Rule 33 and 34, their responses were not due until 30 days after service unless the Court shortens the time—i.e., until after the trial in this case. Ex. C. (Legislative Defendants had never previously suggested to Plaintiffs that they believed the ordinary timelines for discovery to govern this case and did not so advise Plaintiffs after receiving the discovery requests on December 21.) Legislative Defendants further responded that the “information requested in the discovery requests is publicly available” on the General Assembly’s website and YouTube. *Id.*

ARGUMENT

Legislative Defendants do not dispute that Plaintiffs are entitled to the requested discovery, which seeks exactly the same information about the 2021 Plans—i.e., the plans actually at issue in this case—that Legislative Defendants already obtained about the *NCLCV* Plaintiffs’ Optimized Maps. Nor have they indicated that they are invoking any privilege.

Neither of Legislative Defendants’ two proffered reasons for refusing to respond to the interrogatories and document request is legitimate. First, as to their complaint about timing, it is

entirely improper in the context of this case for Legislative Defendants to sandbag Plaintiffs by taking the position, after the deadline Plaintiffs provided for a response has passed and on a national holiday, that their responses are not due until after the trial is over absent an order from the Court. Legislative Defendants have demanded discovery from Plaintiffs via email, without even serving formal discovery requests, on expedited timelines.

In any event, this Court should simply order Legislative Defendants to respond by December 28 at 9 a.m. Plaintiffs are already suffering significant prejudice as a consequence of Legislative Defendants' failure to respond in time for the deposition of Representative Hall, which is taking place today. Senator Hise's deposition is scheduled for December 29.

Legislative Defendants also stated that "the information requested in the discovery requests is publicly available at www.ncleg.gov and YouTube ([NCGA Redistricting - YouTube](#)).” Ex. C. This is, of course, not true. There is no list on the General Assembly website or on YouTube identifying all of the people who were involved in drawing the 2021 Plans. In any event, Rule 33 requires parties to answer interrogatories “in writing under oath,” and requires the answers “to be signed by the person making them.” An unsworn email from counsel is not a proper response, especially an email taking a position that is patently false.

Plaintiffs also requested the identification and production of all source data used in drawing the 2021 Plans and all outputs, including analysis of the 2021 Plans by Legislative Defendants, their aides or consultants, or anyone else involved in drawing the plans. That material is, of course, not all publicly available. If it is, Rule 33 requires each Legislative Defendant to identify those materials, indicate where they are available via specific hyperlink to each document, and importantly, to swear that they did not rely on any additional material.

CONCLUSION

Plaintiffs respectfully request that the Court order Legislative Defendants to fully respond to the interrogatories and document requests, which simply seek the same information about the 2021 Plans that Legislative Defendants sought about the *NCLCV* Plaintiffs' Optimized Maps, by December 28 at 9 a.m.

Respectfully submitted, this the 27th day of December, 2021.

By: /s/ Paul E. Smith

PATTERSON HARKAVY LLP

Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Harper Plaintiffs

ELIAS LAW GROUP LLP

Abha Khanna*
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
AKhanna@elias.law

Lalitha D. Madduri*
Jacob D. Shelly*
Graham W. White
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

Elisabeth S. Theodore
R. Stanton Jones*
Samuel F. Callahan
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
elisabeth.theodore@arnoldporter.com

Counsel for Harper Plaintiffs

**Pro hac vice motion pending*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this day *by email*, addressed to counsel for all other parties.

This the 27th day of December, 2021.

/s/ Paul E. Smith
Paul E. Smith, NC Bar No. 45014

Electronically Filed
2021-12-27 10:02:03

Exhibit A

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 21 CVS 015426
No. 21 CVS 500085

NORTH CAROLINA LEAGUE OF CONSERVATION
VOTERS, INC., *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

COMMON CAUSE,

Plaintiff,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

***HARPER* PLAINTIFFS’
SECOND SET OF
INTERROGATORIES TO
LEGISLATIVE
DEFENDANTS**

NOW COME PLAINTIFFS, by and through their undersigned counsel, and hereby serve upon the Legislative Defendants (“Defendants” or “You”) the following Plaintiffs’ Second Set of Interrogatories (“Request”) pursuant to Rules 26 and 33 of the North Carolina Rules of Civil Procedure. Unless otherwise stated, you are required to provide a complete written response to each interrogatory, under oath, within 30 days after the service of this Request, except that you may serve a response within 45 days after service of the Summons and Complaint upon you. If you object to a specific interrogatory, the reasons for the objection must be stated with particularity. If objection is made to part of an interrogatory, the part shall be specified.

You are required, when responding to this Request, to furnish all information available to you, to your attorneys or agents, or to anyone acting on your behalf or on behalf of your attorneys, or your agents.

For purposes of responding to this Request, you shall use the instructions and definitions contained herein. The Request shall be continuing in nature until the date of trial, and Defendants are required to serve supplemental responses as additional information may become available to them.

INSTRUCTIONS

For the purposes of this Request, the following instructions shall apply as set forth below except as otherwise required by context:

1. **BE ADVISED** that under Rule 37 of the North Carolina Rules of Civil Procedure, if you fail to respond to a request made herein under Rule 33, or if you give an evasive or incomplete response, the Plaintiffs may move for a court order compelling you to respond. If such motion is granted, the court may require you to pay the reasonable costs incurred in obtaining the order, including attorneys’ fees. Failure to comply with such a court order may result in further sanctions or in contempt of court.
2. Words used in the singular number shall include the plural number, and words used in the plural number shall refer to the singular number as well.
3. If any Request is objected to on the grounds of its being overly broad or unduly burdensome, state the manner in which it is overly broad or unduly burdensome and respond to the Request as narrowed to conform to such objection.
4. **If any documents, communications, ESI, or responses are withheld on the ground of any privilege, identify the following:**
 - A. the names and addresses of the speaker or author of the communication or document that forms the basis for the withheld response;
 - B. the date of the communication or document;
 - C. the name and address of any person to whom the communication was made or the document was sent or to whom copies were sent or circulated at any time;

- D. the type of document or communication (e.g., letter, memorandum, invoice, contract, etc.);
- E. the name and address of any person currently in possession of the document or a copy thereof; and
- F. the privilege claimed and specific grounds therefor.

DEFINITIONS

For purposes of these Requests, the following definitions shall apply except as otherwise required by context:

1. “Identify,” “identifying,” and “identification,” when referring to a person, mean to provide an identification sufficient to notice a deposition of such person and to serve such person with process to require his or her attendance at a place of examination and shall include, without limitation, his or her full name, present or last known address, present or last known business affiliation, home and business telephone number, title or occupation, and each of his or her business or employment positions or affiliations during the period of time in which the 2021 Plans were being created.
2. “2021 Plans Criteria” means the criteria for drawing the 2021 Plans adopted by the House Committee on Redistricting and Senate Committee on Redistricting and Elections on August 12, 2021.
3. “2021 Plans” mean the 2021 redistricting plans for the North Carolina House of Representatives, North Carolina Senate, and North Carolina delegation to the U.S. House of Representatives that were passed by the North Carolina General Assembly in November 2021.

INTERROGATORIES

1. Identify, **by 5 p.m. on December 23, 2021**, each person who, to your knowledge, took part in the drawing of the 2021 Plans, including each person who had any involvement in (a) the development, formulation, discussion, consideration, assessment, review, drawing, revision, negotiation, and/or adoption of the 2021 Plans and/or the 2021 Plans Criteria; (b) assisting Legislative Defendants, directly or indirectly, in conducting any of the activities described in subsection (a); or (c) providing input, directly or indirectly, to any Legislative Defendant, to their staff, or to employees of the General Assembly on the 2021 Plans and/or the 2021 Plans Criteria. This request covers individuals including, but not limited to, legislative staff members and contractors, legal counsel, members of political organizations, and outside consultants of any kind, including outside political consultants or outside mapmakers.

RESPONSE:

2. Identify, **by 5 p.m. on December 23, 2021**, all documents or data relied upon or otherwise considered by any Legislative Defendant or by any person identified in response to Interrogatory No. 1 above in connection with the creation of the 2021 Plans, including but not limited to draft redistricting plans (whether partial or complete), analysis of or relating to the 2021 Plans or drafts thereof, election or other partisan data, racial data, or any other data.

RESPONSE:

Dated: December 21, 2021

By: /s/ Burton Craige

PATTERSON HARKAVY LLP

Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Harper Plaintiffs

ELIAS LAW GROUP LLP

Abha Khanna*
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
AKhanna@elias.law

Lalitha D. Madduri*
Jacob D. Shelly*
Graham W. White
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

Elisabeth S. Theodore
R. Stanton Jones*
Samuel F. Callahan
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
elisabeth.theodore@arnoldporter.com

Counsel for Harper Plaintiffs

**Pro hac vice motion pending*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to counsel for all other parties.

This the 21st day of December, 2021.

/s/ Samuel F. Callahan
Samuel F. Callahan (admitted pro hac vice)

Exhibit B

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 21 CVS 015426
No. 21 CVS 500085

NORTH CAROLINA LEAGUE OF CONSERVATION
VOTERS, INC., *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

COMMON CAUSE,

Plaintiff,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

***HARPER* PLAINTIFFS’
FIRST SET OF REQUESTS
FOR PRODUCTION TO
LEGISLATIVE
DEFENDANTS**

NOW COME PLAINTIFFS, by and through their undersigned counsel, and hereby serve upon the Legislative Defendants (“Defendants” or “You”) the following Plaintiffs’ First Set of Requests for Production of Documents (“Request”) pursuant to Rules 26 and 34 of the North Carolina Rules of Civil Procedure. Unless otherwise stated, you are required to produce the following documents and things requested for inspection and copying at the offices of Patterson Harkavy LLP, 100 Europa Dr., Suite 420, Chapel Hill, NC 27517 within 30 days after the services of this Request, except that you may serve a response within 45 days after service of the Summons and Complaint upon you. The response to the Request must state that inspection, copying, and related activities will be permitted as requested with respect to each item or category of document, unless the request is objected to, in which event, the reasons for the objection must be stated with particularity.

You are required, when responding to this Request, to furnish all information available to you, to your attorneys or agents, or to anyone acting on your behalf or on behalf of your attorneys, or your agents. Unless stated otherwise, this Request calls for the production of all responsive documents in your possession, custody, or control without regard to where the documents may be physically located, and without regard to who prepared or delivered the documents.

For purposes of responding to this Request, you shall use the instructions and definitions contained herein. The Request shall be continuing in nature until the date of trial.

INSTRUCTIONS

For the purposes of this Request, the following instructions shall apply as set forth below except as otherwise required by context:

1. **BE ADVISED** that under Rule 37 of the North Carolina Rules of Civil Procedure, if you fail to respond to a request made herein under Rule 34, or if you give an evasive or incomplete response, the Plaintiffs may move for a court order compelling you to respond. If such motion is granted, the court may require you to pay the reasonable costs incurred in obtaining the order, including attorneys’ fees. Failure to comply with such a court order may result in further sanctions or in contempt of court.
2. Words used in the singular number shall include the plural number, and words used in the plural number shall refer to the singular number as well.
3. If any Request is objected to on the grounds of its being overly broad or unduly burdensome, state the manner in which it is overly broad or unduly burdensome and respond to the Request as narrowed to conform to such objection.
4. **If any documents, communications, ESI, or responses are withheld on the ground of any privilege**, identify the following:
 - A. the names and addresses of the speaker or author of the communication or document that forms the basis for the withheld response;

- B. the date of the communication or document;
- C. the name and address of any person to whom the communication was made or the document was sent or to whom copies were sent or circulated at any time;
- D. the type of document or communication (e.g., letter, memorandum, invoice, contract, etc.);
- E. the name and address of any person currently in possession of the document or a copy thereof; and
- F. the privilege claimed and specific grounds therefor.

DEFINITIONS

For purposes of these Requests, the following definitions shall apply except as otherwise required by context:

1. “Document” is used in its broadest sense and is intended to be comprehensive and to include, without limitation, a record, in whatever medium (*e.g.*, paper, computerized format, e-mail, photograph, audiotape) it is maintained, and includes originals and each and every non-identical copy of all writings of every kind, including drafts, legal pleadings, brochures, circulars, advertisements, letters, internal memoranda, minutes, notes or records of meetings, reports, comments, affidavits, statements, summaries, messages, worksheets, notes, correspondence, diaries, calendars, appointment books, registers, travel records, tables, calculations, books of account, budgets, bookkeeping or accounting records, telephone records, tables, stenographic notes, financial data, checks, receipts, financial statements, annual reports, accountants’ work papers, analyses, forecasts, statistical or other projections, newspaper articles, press releases, publications, tabulations, graphs, charts, maps, public records, telegrams, books, facsimiles, agreements, opinions or reports of experts, records or transcripts of conversations, discussions, conferences, meetings or interviews, whether in person or by telephone or by any other means and all other forms or types of written or printed matter or tangible things on which any words, phrases, or numbers are affixed, however produced or reproduced and wherever located, which are in Your possession, custody or control. The term “Document” includes electronic mail and attachments, data processing or computer printouts, tapes, documents contained on floppy disks, hard disks, computer hard drives, CDs, and DVDs, or retrieval listings, together with programs and program documentation necessary to utilize or retrieve such information, and all other mechanical or electronic means of storing or recording information, as well as tape, film or cassette sound or visual recordings and reproduction for film impressions of any of the aforementioned writings.
2. A request seeking production of communications between you and an individual or entity includes communications between you and the individual or entity’s agents, officers, members, employees, consultants, or representatives.

REQUESTS

1. Produce, **by 5 p.m. on December 23, 2021**, all documents and data identified in your response to *Harper* Plaintiffs’ Interrogatory No. 2 to Legislative Defendants, served on December 21, 2021.

Dated: December 21, 2021

By: /s/ Burton Craige

PATTERSON HARKAVY LLP

Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Harper Plaintiffs

ELIAS LAW GROUP LLP

Abha Khanna*
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
AKhanna@elias.law

Lalitha D. Madduri*
Jacob D. Shelly*
Graham W. White
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

Elisabeth S. Theodore
R. Stanton Jones*
Samuel F. Callahan
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
elisabeth.theodore@arnoldporter.com

Counsel for Harper Plaintiffs
**Pro hac vice motion pending*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to counsel for all other parties.

This the 21st day of December, 2021.

/s/ Samuel F. Callahan
Samuel F. Callahan (admitted pro hac vice)

Exhibit C

Theodore, Elisabeth

From: Phil Strach <phil.strach@nelsonmullins.com>
Sent: Monday, December 27, 2021 8:13 AM
To: Jones, Stanton; Theodore, Elisabeth; Callahan, Sam
Cc: McKnight, Katherine L.; Steed, Terence; zzz.External.akhanna@elias.law; zzz.External.lmadduri@elias.law; zzz.External.jshelly@elias.law; zzz.External.gwhite@elias.law; allison@southerncoalition.org; Hilary H. Klein; Alyssa Riggins; Mitchell D. Brown; Katelin Kaiser; jeffloperfido@scsj.org; Adam Doerr; Narendra Ghosh; Brennan, Stephanie; Burton Craige; Erik R. Zimmerman; Majmundar, Amar; Paul Smith; Stephen Feldman; Tom Farr; Babb, Mary Carla (Hollis); Braden, E. Mark; Raile, Richard; Lewis, Patrick T.; John Branch; Schauf, Zachary C.; Hirsch, Sam; Amunson, Jessica Ring; Bracey, Kali N.; Mittal, Urja R.; Molodanof, Olivia; Boer, Tom; Martin Warf; Greg McGuire; Nate Pencook; Cella, John
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Harper Pls 2d Interrogatories and 1st RFPs to LDs

External E-mail

Stanton: Your email below is not a proper response to my response. We are simply following the North Carolina Rules of Civil Procedure (specifically N.C. R. Civ. P. 33(a), 34(b)). Please do the same. Thank you. Phil



PHILLIP J. STRACH **PARTNER**

phil.strach@nelsonmullins.com

GLENLAKE ONE | SUITE 200

4140 PARKLAKE AVENUE | RALEIGH, NC 27612

T 919.329.3812 F 919.329.3799

NELSONMULLINS.COM [VCARD](#) [VIEW BIO](#)

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>
Sent: Sunday, December 26, 2021 5:42 PM
To: Phil Strach <phil.strach@nelsonmullins.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>
Cc: McKnight, Katherine L. <kmcknight@bakerlaw.com>; Steed, Terence <Tsteed@ncdoj.gov>; akhanna@elias.law; lmadduri@elias.law; jshelly@elias.law; gwhite@elias.law; allison@southerncoalition.org; Hilary H. Klein <hilaryhklein@scsj.org>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Mitchell D. Brown <mitchellbrown@scsj.org>; Katelin Kaiser <katelin@scsj.org>; jeffloperfido@scsj.org; Adam Doerr <ADoerr@robinsonbradshaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Erik R. Zimmerman <ezimmerman@robinsonbradshaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Paul Smith <psmith@pathlaw.com>; Stephen Feldman <SFeldman@robinsonbradshaw.com>; Tom Farr <tom.farr@nelsonmullins.com>; Babb, Mary Carla (Hollis) <MCBabb@ncdoj.gov>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; Lewis, Patrick T. <plewis@bakerlaw.com>; John Branch <john.branch@nelsonmullins.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Hirsch, Sam <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Bracey, Kali N. <KBracey@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>; Molodanof, Olivia <olivia.molodanof@hoganlovells.com>; Boer, Tom

<tom.boer@hoganlovells.com>; Martin Warf <martin.warf@nelsonmullins.com>; Greg McGuire <greg.mcguire@nelsonmullins.com>; Nate Pencook <nate.pencook@nelsonmullins.com>; Cella, John <John.Cella@arnoldporter.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Harper Pls 2d Interrogatories and 1st RFPs to LDs

Phil: Your email below is not a proper response to our written discovery requests. Under the circumstances, Legislative Defendants cannot reasonably rely on the ordinary 30-day window to respond to discovery requests, which in this case would be after the trial is over; in any event, if Legislative Defendants intended to object on timing grounds, they should have let us know days ago when the requests were served. And substantively, simply pointing to the General Assembly's website and YouTube is plainly not an adequate response. We served an interrogatory and requests for production on all Legislative Defendants seeking information and materials that are not publicly available. Please provide proper responses and objections, as well as all responsive, non-privileged documents, by 9:30am tomorrow (Monday, December 27). If not, we will seek relief from the Court.

Regards,
Stanton

From: Phil Strach <phil.strach@nelsonmullins.com>

Sent: Friday, December 24, 2021 11:40 AM

To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>

Cc: McKnight, Katherine L. <kmcknight@bakerlaw.com>; Steed, Terence <TSteed@ncdoj.gov>; Jones, Stanton

<Stanton.Jones@arnoldporter.com>; zzz.External.akhanna@elias.law <akhanna@elias.law>;

zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>;

zzz.External.gwhite@elias.law <gwhite@elias.law>; allison@southerncoalition.org; Hilary H. Klein

<hilaryhklein@scsj.org>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Mitchell D. Brown

<mitchellbrown@scsj.org>; Katelin Kaiser <katelin@scsj.org>; jeffloperfido@scsj.org; Adam Doerr

<ADoerr@robinsonbradshaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Brennan, Stephanie

<Sbrennan@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Erik R. Zimmerman

<ezimmerman@robinsonbradshaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Paul Smith

<psmith@pathlaw.com>; Stephen Feldman <SFeldman@robinsonbradshaw.com>; Tom Farr

<tom.farr@nelsonmullins.com>; Babb, Mary Carla (Hollis) <MCBabb@ncdoj.gov>; Braden, E. Mark

<MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Lewis, Patrick T. <plewis@bakerlaw.com>; John

Branch <john.branch@nelsonmullins.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Hirsch, Sam

<SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Bracey, Kali N. <KBracey@jenner.com>;

Mittal, Urja R. <UMittal@jenner.com>; Molodanof, Olivia <olivia.molodanof@hoganlovells.com>; Boer, Tom

<tom.boer@hoganlovells.com>; Martin Warf <martin.warf@nelsonmullins.com>; Greg McGuire

<greg.mcguire@nelsonmullins.com>; Nate Pencook <nate.pencook@nelsonmullins.com>; Cella, John

<John.Cella@arnoldporter.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Harper Pls 2d Interrogatories and 1st RFPs to LDs

External E-mail

Elisabeth:

The NCLCV optimized maps and associated data were required to be produced pursuant to the Scheduling Order. Under the North Carolina Rules of Civil Procedure, responses to written discovery responses are due 30 days after service unless the Court shortens the time. N.C. R. Civ. P. 33(a), 34(b). In any event, because of the historically transparent redistricting process used by the General Assembly the information requested in the discovery requests is publicly available at www.ncleg.gov and YouTube ([NCGA Redistricting - YouTube](#)).

Thanks.

Phil



PHILLIP J. STRACH **PARTNER**

phil.strach@nelsonmullins.com

GLENLAKE ONE | SUITE 200

4140 PARKLAKE AVENUE | RALEIGH, NC 27612

T 919.329.3812 F 919.329.3799

NELSONMULLINS.COM [VCARD](#) [VIEW BIO](#)

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Sent: Friday, December 24, 2021 9:33 AM

To: Callahan, Sam <Sam.Callahan@arnoldporter.com>

Cc: McKnight, Katherine L. <kmcknight@bakerlaw.com>; Steed, Terence <Tsteed@ncdoj.gov>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; akhanna@elias.law; lmadduri@elias.law; jshelly@elias.law; gwhite@elias.law; allison@southerncoalition.org; Hilary H. Klein <hilaryhklein@scsj.org>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Mitchell D. Brown <mitchellbrown@scsj.org>; Katelin Kaiser <katelin@scsj.org>; jeffloperfido@scsj.org; Adam Doerr <ADoerr@robinsonbradshaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Erik R. Zimmerman <ezimmerman@robinsonbradshaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Paul Smith <psmith@pathlaw.com>; Phil Strach <phil.strach@nelsonmullins.com>; Stephen Feldman <SFeldman@robinsonbradshaw.com>; Tom Farr <tom.farr@nelsonmullins.com>; Babb, Mary Carla (Hollis) <MCBabb@ncdoj.gov>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Lewis, Patrick T. <plewis@bakerlaw.com>; John Branch <john.branch@nelsonmullins.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Hirsch, Sam <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Bracey, Kali N. <KBracey@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>; Molodanof, Olivia <olivia.molodanof@hoganlovells.com>; Boer, Tom <tom.boer@hoganlovells.com>; Martin Warf <martin.warf@nelsonmullins.com>; Greg McGuire <greg.mcguire@nelsonmullins.com>; Nate Pencook <nate.pencook@nelsonmullins.com>; Cella, John <John.Cella@arnoldporter.com>

Subject: Re: NCLCV v Hall (21 CVS 15426) -- Harper Pls 2d Interrogatories and 1st RFPs to LDs

◀External Email▶ - From: prvs=9853f3c82=Elisabeth.Theodore@arnoldporter.com

Counsel:

We haven't heard back from you about our discovery requests, which were due yesterday and sought the same information you asked for and received about the NCLCV "optimized maps," namely a list of people who was involved in drawing the plans or assisting those who did, and source data and analysis of those plans. Obviously, if you are entitled to that information about a proposed alternative map, we are entitled to that information about the actual maps that are the subject of this litigation. Are you asserting legislative privilege?

Please let us know your position by today at noon. At minimum, we need this discovery by Sunday at noon so that we can review it before Rep. Hall's deposition.

Thanks,
Elisabeth

On Dec 21, 2021, at 11:15 AM, Callahan, Sam <Sam.Callahan@arnoldporter.com> wrote:

Counsel: Please find attached *Harper* Plaintiffs' Second Set of Interrogatories to Legislative Defendants and First Set of Requests for Production to Legislative Defendants.

Thank you,
Sam Callahan

Sam Callahan
Associate

Arnold & Porter
601 Massachusetts Ave., NW
Washington | District of Columbia 20001-3743
T: +1 202.942.5816
Sam.Callahan@arnoldporter.com | www.arnoldporter.com

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Tuesday, December 21, 2021 10:54 AM
To: 'McKnight, Katherine L.' <kmcknight@bakerlaw.com>; Steed, Terence <Tsteed@ncdoj.gov>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; zzz.External.akhanna@elias.law <akhanna@elias.law>; zzz.External.Imadduri@elias.law <Imadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; allison@southerncoalition.org; Hilary H. Klein <hilaryhklein@scsj.org>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Mitchell D. Brown <mitchellbrown@scsj.org>; Katelin Kaiser <katelin@scsj.org>; jeffloperfido@scsj.org; Adam Doerr <ADoerr@robinsonbradshaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Erik R. Zimmerman <ezimmerman@robinsonbradshaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Paul Smith <psmith@pathlaw.com>; Phil Strach <phil.strach@nelsonmullins.com>; Stephen Feldman <SFeldman@robinsonbradshaw.com>; Tom Farr <tom.farr@nelsonmullins.com>; Babb, Mary Carla (Hollis) <MCBabb@ncdoj.gov>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Lewis, Patrick T. <plewis@bakerlaw.com>; John Branch <john.branch@nelsonmullins.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Hirsch, Sam <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Bracey, Kali N. <KBracey@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>; Molodanof, Olivia <olivia.molodanof@hoganlovells.com>; Boer, Tom <tom.boer@hoganlovells.com>; Martin Warf <martin.warf@nelsonmullins.com>; Greg McGuire <greg.mcguire@nelsonmullins.com>; Nate Pencook <nate.pencook@nelsonmullins.com>; Cella, John <John.Cella@arnoldporter.com>
Subject: RE: NCLCV v. Hall - evidentiary and scheduling issues

Thanks for this response, Kate.

The three plaintiff groups collectively anticipate offering 7 expert witnesses. We aren't in a position to provide a count right now on fact witnesses who will testify at trial, especially in light of the pending question relating to the admissibility of fact affidavits.

As for scheduling expert depositions, while we understand the competing obligations that everyone has, Dec. 30 and Dec. 31 are the only possible days to schedule depositions of your rebuttal experts, which is why we wanted to provide notice to hold those dates. Given that your rebuttal experts will disclose

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426
21 CVS 500085

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

REBECCA HARPER, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

**RESPONSE TO *HARPER*
PLAINTIFFS’ MOTION TO
COMPEL RESPONSES TO SECOND
SET OF INTERROGATORIES AND
FIRST SET OF
REQUESTS FOR PRODUCTION**

NOW COME President *Pro Tempore* Philip E. Berger, Senator Warren Daniel, Senator Ralph E. Hise, Senator Paul Newton, Speaker Timothy K. Moore, and Representative Destin Hall (collectively, “Legislative Defendants”), by and through undersigned counsel and pursuant to this Court’s December 13, 2021 Scheduling Order and Rules 7(b), 33(a), and 34(b) of the North Carolina Rules of Civil Procedure, and hereby respond to *Harper* Plaintiffs’ Motion to Compel Responses to Written Discovery. Legislative Defendants show the Court as follows:

PROCEDURAL HISTORY

A brief recitation of pertinent aspects of the procedural history is appropriate to place *Harper* Plaintiffs’ Motion within context:

NCLCV Plaintiffs filed their complaint with the court on November 16, 2021. The *Harper* Plaintiffs filed their complaint on November 18, 2021. On December 8, 2021, the Supreme Court of North Carolina ordered this Court to issue a written order on the merits of this dispute by January 11, 2021, thirty-four days later.

This Court ordered the parties to submit proposed scheduling orders by December 10, 2021. The *Harper* Plaintiffs’ December 10 submission did not request specialized or expedited treatment of written discovery in the Court’s Scheduling Order. On December 13, 2021, this Court issued its Scheduling Order. The Scheduling Order did not provide expedited deadlines for responding to written discovery requests despite universal knowledge of the incredibly expedited scheduling demands on this Court and the parties. The Scheduling Order did, however, state in Paragraph 9 that “The North Carolina Rules of Civil Procedure, General Rules of Practice for the Superior and District Courts, and Local Rules of Civil Superior Court for Wake County shall govern all matters not expressly covered or superseded by this Order.”

Harper Plaintiffs served their first set of Interrogatories on Legislative Defendants on December 13, 2021, but did not seek leave of the Court for an expedited deadline for a response. *Harper* Plaintiffs served their second set of Interrogatories and first set of Requests for Production of Documents on Legislative Defendants on December 21, 2021, but again, did not seek leave of the Court for an expedited deadline for a response. On December 24, 2021, counsel for *Harper* Plaintiffs emailed requesting an update on responses to the discovery responses. Counsel for Legislative Defendants responded two hours later stating that the North Carolina Rules of Civil

Procedure under which the discovery requests were made, Rules 33 and 34, provided for 30-day response periods unless the Court ordered otherwise. This email also informed *Harper* Plaintiffs’ counsel that the information sought by the discovery requests “is publicly available” at the General Assembly’s website and YouTube channel.

Harper Plaintiffs responded on December 26, 2021 at 5:42 p.m. stating that Legislative Defendants’ counsel’s response was “not [] proper” and that it was unreasonable to “rely on the ordinary 30-day window to respond to discovery requests.” *Harper* Plaintiffs then filed a Motion to Compel on December 27, 2021 and the Court has ordered Legislative Defendants to respond by 3:00 p.m.

STANDARDS

Paragraph 9 of the Scheduling Order states: “The North Carolina Rules of Civil Procedure, General Rules of Practice for the Superior and District Courts, and Local Rules of Civil Superior Court for Wake County shall govern all matters not expressly covered or superseded by this Order.”

The pertinent parts of Rule 33(a) of the North Carolina Rules of Civil Procedure state as follows: “Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.... The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon the defendant. The court may allow a shorter or longer time....”

The pertinent parts of Rule 34(b) of the North Carolina Rules of Civil Procedure state as follows: “The request may, without leave of court, be served upon the plaintiff after

commencement of the action and upon any other party with or after service of the summons and complaint upon that party. ...The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time.”

ARGUMENT

Harper Plaintiffs’ Motion to Compel is improper and should be denied. The Motion comes despite *Harper* Plaintiffs having failed to take advantage of numerous opportunities to seek expedited discovery, despite *Harper* Plaintiffs having numerous other avenues to obtain the information sought by the discovery they now seek to compel, and despite substantial prejudice that granting the Motion would cause Legislative Defendants.

A. *Harper* Plaintiffs’ Failure to Avail Themselves of Opportunities for Expedited Written Discovery Precludes Their Last-Minute Motion to Compel.

Harper Plaintiffs’ Motion to Compel should be denied because they have failed to avail themselves of numerous other opportunities to obtain the discovery they now seek to have this Court compel. N.C. Rules of Civil Procedure 33(a) and 34(b), each provide 30 days from the date of service to respond to discovery requests made under those rules. A party may seek leave of Court for a shorter deadline. Additionally, a party may serve each type of discovery as early as the time of service of the summons and complaint. *Harper* Plaintiffs’ Motion should be denied for their failure to take advantage of at least three opportunities to seek expedited written discovery in this matter.

First, *Harper* Plaintiffs could have obtained the written discovery they now ask this Court to compel, without any Court intervention, if they had served these discovery requests at the time they served the summons and complaint. They did not.

Second, *Harper* Plaintiffs could have asked the Court for an expedited schedule for written discovery requests at the time they submitted their proposed Scheduling Order to the Court. They did not. Indeed, *Harper* Plaintiffs’ proposed scheduling order does not even mention written discovery. And the Court’s Scheduling Order does not provide for expedited deadlines for written discovery.

Third, *Harper* Plaintiffs could have sought leave of Court for expedited response deadlines at either time they serve the written discovery at issue in this Motion to Compel. Again, they did not.

Accordingly, the black letter of North Carolina’s Rules of Civil Procedure and this Court’s Scheduling Order provided multiple avenues for *Harper* Plaintiffs to seek expedited responses to the written discovery at issue in this Motion. They failed to take advantage of any of them. The Court should not now award their lack of compliance with governing rules by granting their Motion to Compel.

B. *Harper* Plaintiffs Can Obtain the Information Sought Through Other Means.

Second, *Harper* Plaintiffs’ Motion to Compel is wholly unnecessary because the information sought by the written discovery subject to the Motion is available through other means. A basic premise of discovery under the North Carolina Rules of Civil Procedure is the notion that discovery should be proportionate to the needs of the case and not be unnecessarily duplicative or redundant. *See* N.C. Gen. Stat § 1A-1, Rule 26(b).

The email from Legislative Defendants’ counsel on December 24, 2021 to *Harper* Plaintiffs’ counsel expressly stated: “the information requested in the discovery requests is publicly available at www.ncleg.gov and YouTube (NCGA Redistricting – YouTube).” That email provided Plaintiffs’ counsel with hyperlinks to those resources. The Parties share the same

relative access to the information. Additionally, *Harper* Plaintiffs’ counsel has the opportunity to depose two of the legislative defendants, who have waived legislative privilege and thus are willing to testify about information sought in the written discovery subject to *Harper* Plaintiffs’ Motion. Just today, Plaintiffs deposed Representative Hall who answered questions about “each person who, to your knowledge, took part in the drawing of the 2021 Plans,” Mot. Ex. A at 4, and “data relied upon or otherwise considered by” him in the map drawing process, *Id.*

As such, *Harper* Plaintiffs (and all Plaintiffs) have multiple avenues of accessing the information sought through their untimely written discovery requests. Plaintiffs’ written discovery requests are unnecessary, duplicative, and harassing, *especially* given the extraordinarily expediting process in this case—which they requested.

C. Legislative Defendants Would be Prejudiced if *Harper* Plaintiffs’ Motion is Granted.

Finally, Legislative Defendants will be prejudiced if *Harper* Plaintiffs’ Motion to Compel is granted. This Court’s Scheduling Order acknowledges the unprecedented speed at which this matter is proceeding, which only is compounded further by the scope of information at issue here as Legislative Defendants prepare to defend against three separate sets of allegations. This week alone, sandwiched between two federal holidays, may consist of approximately a dozen depositions on top of the myriad issues and processes attendant to preparing for a trial that starts in six days. *Harper* Plaintiffs’ seek a court order directing Legislative Defendants to, among other things, produce “all documents or data relied upon or otherwise considered [. . .] by any person [. . .] in connection with the creation of the 2021 Plans.” Mot. Ex. A at p.4. And *Harper* Plaintiffs define the word “document” “in its broadest sense” to include items like “receipts,” the word “tables” appears at least twice in the bloated definition, and “includes originals and each and every

non-identical copy of all writings of every kind.” Mot. Ex. B at p. 3.¹ After failing to secure, let alone seek, expedited discovery deadlines, *Harper* Plaintiffs would have Legislative Defendants sent on a fishing expedition these last days before trial, diverting resources away from preparation, when this information is readily available—and being offered—through other means.

Harper Plaintiffs’ Motion to Compel violates the dictates of N.C. R. Civ. P. 26(g), which requires that discovery be handled “consistent with the rules and warranted by existing law [and] not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation, [and] not unreasonable or unduly burdensome [] given the needs of the case [and] the discovery already had in the case....”

¹ *Harper* Plaintiffs define the term “document” in the following way: “‘Document’ is used in its broadest sense and is intended to be comprehensive and to include, without limitation, a record, in whatever medium (e.g., paper, computerized format, e-mail, photograph, audiotape) it is maintained, and includes originals and each and every non-identical copy of all writings of every kind, including drafts, legal pleadings, brochures, circulars, advertisements, letters, internal memoranda, minutes, notes or records of meetings, reports, comments, affidavits, statements, summaries, messages, worksheets, notes, correspondence, diaries, calendars, appointment books, registers, travel records, tables, calculations, books of account, budgets, bookkeeping or accounting records, telephone records, tables, stenographic notes, financial data, checks, receipts, financial statements, annual reports, accountants’ work papers, analyses, forecasts, statistical or other projections, newspaper articles, press releases, publications, tabulations, graphs, charts, maps, public records, telegrams, books, facsimiles, agreements, opinions or reports of experts, records or transcripts of conversations, discussions, conferences, meetings or interviews, whether in person or by telephone or by any other means and all other forms or types of written or printed matter or tangible things on which any words, phrases, or numbers are affixed, however produced or reproduced and wherever located, which are in Your possession, custody or control. The term “Document” includes electronical mail and attachments, data processing or computer printouts, tapes, documents contained on floppy disks, hard disks, computer hard drives, CDs, and DVDs, or retrieval listings, together with programs and program documentation necessary to utilize or retrieve such information, and all other mechanical or electronic means of storing or recording information, as well as tape, film or cassette sound or visual recordings and reproduction for film impressions of any of the aforementioned writings.” Mot. Ex. B at p. 3.

D. The *Harper* Plaintiffs’ Arguments in Support of Their Motion Fail.

Harper Plaintiffs’ Motion makes two arguments in support of their motion, but both fail. First, *Harper* Plaintiffs position that their discovery simply seeks the same type of information that Legislative Defendants sought from the *NCLCV* Plaintiffs is not true. The Enacted Plans were drawn in public, on public computers, and the drawing process was recorded and uploaded to YouTube. There is no allegation that the Enacted Plans were created by a computer code, so that and related materials do not exist. The computer materials that do exist is the block-assignment file, which the *Harper* Plaintiffs (presumably) have, and the recordings from the drawing sessions, which are already available. In contrast, the *NCLCV* Plaintiffs alleged in their complaint that their so-called “Optimized Maps” were created by a sophisticated computer algorithm to achieve Pareto optimization by some undisclosed criteria. This implied the existence of computer code, experts qualified to create and run it, and criteria engrafted into the code. All of that was kept secret and it was capable of being disclosed given that the *NCLCV* Plaintiffs asked this Court to require North Carolina elections to be conducted under their maps as opposed to the Enacted Plans.

Moreover, Legislative Defendants’ efforts to obtain this information from the *NCLCV* Plaintiffs occurred far earlier in the discovery process, having been the subject of a Motion to Compel nearly two weeks ago on December 14, 2021, which the Court resolved in favor of Legislative Defendants on December 15, 2021, and then further clarified on December 20, 2021. As such, Legislative Defendant’s efforts to obtain discovery from *NCLCV* Plaintiffs had already been through two rounds of briefing before this Court before *Harper* Plaintiffs even served the written discovery requests subject to this Motion to Compel.

Second, *Harper* Plaintiffs’ Motion argues that an email from Legislative Defendants’ counsel fails to constitute a proper response under the Rules of Civil Procedure. That argument

assumes that said email constitutes Legislative Defendants’ response. Legislative Defendants have not responded to *Harper* Plaintiffs’ discovery requests because no response is yet due under this Court’s Scheduling Order and the N.C. Rules of Civil Procedure, as explained above.

CONCLUSION

Harper Plaintiffs’ Motion to Compel is a paradigmatic example of “poor planning on your part does not necessitate an emergency on mine.” The Motion is inappropriate, improper, and constitutes harassment. The Court should deny it outright.

WHEREFORE, for the reason set forth above, the Movants respectfully pray that the Court deny *Harper* Plaintiffs’ Motion to Compel, and grant all any and all other relief that the Court deems appropriate.

Respectfully submitted, this the 27th day of December, 2021.

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com
Thomas A. Farr (NC Bar No. 10871)
tom.farr@nelsonmullins.com
Alyssa M. Riggins (NC Bar No. 52366)
alyssa.riggins@nelsonmullins.com
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 329-3800

BAKER HOSTETLER LLP
Mark E. Braden* (DC Bar No. 419915)
MBraden@bakerlaw.com
Katherine McKnight* (VA Bar No. 81482)
kmcknight@bakerlaw.com
1050 Connecticut Ave NW, Suite 1100 Washington
DC 20036
* Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

It is hereby certified that on this the 27th day of December, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com
Counsel for Plaintiffs North Carolina League of Conservation Voters, et al.

Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
Counsel for the North Carolina State Board of Elections; Damon Circosta, Stella Anderson, Jeff Carmon III, Stacy Eggers IV, and Tommy Tucker, in their official capacities with the State Board of Elections

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
Counsel for Plaintiffs North Carolina League of Conservation Voters, et al.

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
Mitchellbrown@scsj.org
Katelin@scsj.org

J. Tom Boer
Olivia T. Molodanof
Hogan Lovells US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com
Counsel for Intervenor Common Cause

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 015426

NORTH CAROLINA LEAGUE, OF
CONSERVATION VOTERS, INC., *et al.*,
Plaintiffs

and

COMMON CAUSE,
Plaintiff-Intervenor,

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, *et*
al.,
Defendants.

Filed this the 27th day of December, 2021
with the Honorable A. Graham Shirley Pursuant
to Rule 5(e) of the North Carolina Rule of Civil
Procedure



STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 500085

REBECCA HARPER, *et al.*,
Plaintiffs

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, *et*
al.,
Defendants.

**ORDER ON HARPER PLAINTIFFS' MOTION TO COMPEL RESPONSES TO
SECOND SET OF INTERROGATORIES AND FIRST SET OF REQUESTS FOR
PRODUCTION**

THIS MATTER came before the undersigned three-judge panel upon Harper Plaintiffs’ Motion to Compel submitted to the Court on December 27, 2021¹ pursuant to Rule 37 of the North Carolina Rules of Civil Procedure.

Procedural and Factual Background

In this litigation, Plaintiffs seek a declaration that the North Carolina Congressional, North Carolina Senate, and North Carolina House of Representatives districts established by an act of the General Assembly in 2021, N.C. Sess. Laws 2021-174 (Senate Bill 750), 2021-173 (Senate Bill 739), and 2021-175 (House Bill 976) (collectively the “Enacted Plans”), violate the rights of Plaintiffs under the North Carolina Constitution. Plaintiffs seek to enjoin the future use of the 2021 congressional and state legislative districts.

On December 13, 2021, after receiving an order from the Supreme Court of North Carolina directing this Court to resolve all Plaintiffs’ claims on the merits by January 11, 2022, this Court entered a Case Scheduling Order giving the parties until December 31, 2021, to complete discovery in advance of trial, which is set to commence on January 3, 2022.

On December 20, 2021, this Court entered an order clarifying that NCLCV Plaintiffs would be required to identify any and all persons who took part in drawing or participated in the computerized production of NCLCV Plaintiffs’ Optimized Maps, that NCLCV Plaintiffs were to produce to Legislative Defendants the method and means by which the Optimized Maps were formulated and produced, including, but not limited to all source code, source data, input parameters, and all outputted data associated with the Optimized Maps, and that NCLCV Plaintiffs were to identify any and all persons who took part in drawing or participated in the computerized production of the Optimized Maps. On December 21, 2021,

¹ As December 27, 2021 is a court holiday and court offices are closed for purposes of filing, The Hon. A. Graham Shirley has accepted Plaintiffs Motion for filing on this 27th day of December, 2021, pursuant to Rule 5(e) of the North Carolina Rules of Civil Procedure.

Harper Plaintiffs requested this same information from Legislative Defendants through interrogatories and requests for production of documents issued, respectively, pursuant to Rules 33 and 34 of the North Carolina Rules of Civil Procedure. Harper Plaintiffs specifically requested this information and documentation as it pertains to the Enacted Plans, including the identification of all persons who took part in the drawing of the Enacted Plans in any way as well as all documents or data relied upon by those involved in the map drawing process.

On December 24, 2021, this Court entered a Protective Order acknowledging assertions of legislative privilege by four of the named Legislative Defendants—President *Pro Tempore* Philip E. Berger, Senator Warren Daniel, Senator Paul Newton, and Speaker Timothy K. Moore—and ordering that those four legislators not be called to testify at depositions noticed by Harper Plaintiffs. In that same Order, this Court noted that nothing in the Order should be construed as a limitation on the ability of Representative Hall or Senator Hise to waive their personal legislative privilege and testify at deposition or at trial. Representative Hall's deposition was scheduled for December 27, 2021, at a time prior to the entry of this order, and Senator Hise's deposition is scheduled for December 28, 2021.

Harper Plaintiffs and Legislative Defendants have informed the Court of their respective positions on the Motion, and the matter is now ripe for resolution by the Court.

Harper Plaintiffs' Motion to Compel

After considering the Motion and the responses to that motion, as well as the matters contained therein, the Court, in its discretion, rules upon Harper Plaintiffs' Motion as follows:

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party." N.C.G.S. § 1A-1, Rule 26(b)(1). "The test for relevance for discovery purposes only requires that information be 'reasonably' calculated to lead to the discovery of admissible evidence." *Lowd v. Reynolds*,

205 N.C. App. 208, 214, 695 S.E.2d 479, 483 (2010) (quoting N.C.G.S. § 1A-1, Rule 26(b)(1)). “[O]rders regarding discovery are within the discretion of the trial court.” *Dworsky v. Travelers Ins. Co.*, 49 N.C. App. 446, 448, 271 S.E.2d 522, 523 (1980).

Rules 33(a) and 34(b) of the North Carolina Rules of Civil Procedure provide that a party upon whom an interrogatory or request for production of documents has been served must serve answers and objections, if any, within thirty days after service; however “[t]he court may allow a shorter or longer time.” N.C.G.S. §§ 1A-1, Rules 33(a) and 34(b). As to answers to interrogatories in particular, such answers must be set forth “separately and fully in writing under oath, unless it is objected to[.]” N.C.G.S. § 1A-1, Rule 33(a). Furthermore, the party submitting the interrogatories or requests for production of documents may move for an order under Rule 37(a) with respect to any objection, failure to answer or respond, or any failure to permit inspection as requested. *Id.*; see N.C.G.S. § 1A-1, Rule 37(a) (“A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery”).

The information and documents Harper Plaintiffs seek to obtain through the propounded interrogatories and requests for production are relevant to the claims asserted by Harper Plaintiffs as well as defenses asserted by Legislative Defendants. Indeed, the information and documentation pertaining to the Enacted Plans, including the identification of all persons who took part in the drawing of the Enacted Plans in any way as well as all documents or data relied upon by those involved in the map drawing process, goes to the heart of the dispute in this redistricting litigation.

Furthermore, the Court has provided for an expedited discovery schedule in these consolidated actions such that a response must be made to Harper Plaintiffs’ interrogatories and requests for production at issue in the Motion to Compel within a shorter period of time than that provided by default under Rules 33 and 34. Accordingly, the Court, on its own

motion, will require Legislative Defendants to answer Harper Plaintiffs' discovery requests before the close of discovery on December 31, 2021.

Conclusion

WHEREFORE, the Court, for the reasons stated herein and in the exercise of its discretion, hereby ORDERS that Harper Plaintiffs' Motion to Compel is GRANTED and Legislative Defendants shall respond to Harper Plaintiffs interrogatories and requests for production at issue in the present Motion. Furthermore, on the Court's own motion and in the exercise of its discretion, hereby ORDERS that Legislative Defendants shall respond by 9:00 AM EST on December 28, 2021.

Nothing in this Order shall be construed as a limitation on Legislative Defendants' ability to assert objections to the discovery requests, including any valid and available privilege assertions. Legislative Defendants, however, are reminded of parties' obligations under Rule 26(b)(5)(a) of the Rules of Civil Procedure when withholding information otherwise discoverable by claiming that the information is privileged or subject to protection from production.

SO ORDERED, this the 27 day of December, 2021.



A. Graham Shirley, Superior Court Judge

/s/ Nathaniel J. Poovey

Nathaniel J. Poovey, Superior Court Judge

/s/ Dawn M. Layton

Dawn M. Layton, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission addressed as follows:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Harper Plaintiffs

Stephen D. Feldman
Adam K. Doerr
Erik R. Zimmerman
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
adoerr@robinsonbradshaw.com
ezimmerman@robinsonbradshaw.com
Counsel for NCLCV Plaintiffs

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Jeffrey Loperfido
SOUTHERN COALITION FOR
SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org
jeffloperfido@scsj.org
Counsel for Common Cause Plaintiff-Intervenor

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
NELSON MULLINS RILEY &
SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Phillip.strach@nelsonmullins.com
Tom.farr@nelsonmullins.com
Alyssa.riggins@nelsonmullins.com
Counsel for Legislative Defendants

Terence Steed
Amar Majmundar
Stephanie A. Brennan
NORTH CAROLINA DEPARTMENT
OF JUSTICE
Post Office Box 629
Raleigh, NC 27602
tsteed@ncdoj.gov
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
Counsel for State Board Defendants

Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 27 day of December 2021.

/s/ Kellie Z. Myers
Kellie Z. Myers
Trial Court Administrator
10th Judicial District
Kellie.Z.Myers@nccourts.org

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 21 CVS 015426
No. 21 CVS 500085

NORTH CAROLINA LEAGUE OF CONSERVATION
VOTERS, INC., *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

COMMON CAUSE,

Plaintiff,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

***HARPER PLAINTIFFS’
MOTION TO COMPEL
ADEQUATE RESPONSES
TO SECOND SET OF
INTERROGATORIES AND
FIRST SET OF REQUESTS
FOR PRODUCTION, AND
FOR OTHER
APPROPRIATE RELIEF***

Pursuant to North Carolina Rule of Civil Procedure 37, *Harper* Plaintiffs move to compel adequate responses to their Second Set of Interrogatories and their First Set of Requests for Production to Legislative Defendants. Legislative Defendants’ responses, served this morning in response to this Court’s December 27 order, are facially deficient and are impeding access to key information that goes “to the heart of the dispute in this redistricting litigation.” Order on Mot. Compel 4. Plaintiffs request that the Court order Legislative Defendants to provide adequate responses by December 29 at 12 p.m. If the requested materials have been lost or destroyed, or if Legislative Defendants otherwise continue to refuse to produce them, Legislative Defendants should be required to certify that loss or destruction, and to show cause why appropriate sanctions should not issue for spoliation and/or failure to comply with the Court’s December 27 order.

BACKGROUND

A. *Harper* Plaintiffs’ Discovery Requests and Motion to Compel

In its December 20, 2021 order on Legislative Defendants’ motion for reconsideration, this Court ordered *NCLCV* plaintiffs to “identify any and all persons who took part in drawing or participated in the computerized production of the Optimized Maps,” and to produce to Legislative Defendants “the method and means by which the Optimized Maps were formulated and produced, including, but not limited to all source code, source data, input parameters, and all outputted data associated with the Optimized Maps.” 12/20/21 Order at 4. The next morning, *Harper* Plaintiffs served discovery requests seeking comparable information about the enacted 2021 Plans. *See* Exs. A, B. *Harper* Plaintiffs’ interrogatories asked Legislative Defendants to identify all persons who took part in drawing the 2021 Plans in any way, including by advising Legislative Defendants on those plans, and including “legislative staff members” and “outside consultants of any kind.” Ex. A at 4. *Harper* Plaintiffs also sought all documents or data that

Legislative Defendants or others who participated in the mapdrawing relied on, including “draft redistricting plans (whether partial or complete)” and “analysis of or relating to the 2021 Plans or drafts thereof.” Ex. A at 4 (interrogatory requesting identification of such material); Ex. B at 4 (request for production of such material).

Legislative Defendants failed to respond by the December 23 deadline set out in the requests. On December 24, in response to *Harper* Plaintiffs’ inquiry, Legislative Defendants responded that their responses were not due until 30 days after service, and that in any event the “information requested in the discovery requests is publicly available” on the General Assembly’s website and YouTube. Ex. C at 4.

On the morning of December 27, *Harper* Plaintiffs moved to compel responses to their requests. In opposition, Legislative Defendants doubled down on their assertion that all information Plaintiffs requested was publicly available. They contended that the motion to compel was “wholly unnecessary because the information sought by the written discovery” was “available through other means,” namely, “publicly available at www.ncleg.gov and YouTube (NCGA Redistricting—YouTube.” Opp. at 5. Legislative Defendants asserted that because they had “provided Plaintiffs’ counsel with hyperlinks to those resources,” the parties “share[d] the same relative access to the information.” *Id.* at 5-6.

Yesterday, the Court granted *Harper* Plaintiffs motion to compel, finding that the information and documents sought “goes to the heart of the dispute in this redistricting matter.” Order on Mot. Compel 4. The Court ordered Legislative Defendants to respond by 9 a.m. this morning. *Id.* at 5.

B. Representative Hall’s Deposition Testimony

Meanwhile, as Legislative Defendants were preparing and serving their opposition, one Legislative Defendant—Representative Destin Hall—was testifying in his deposition that the information *Harper* Plaintiffs requested was *not* “publicly available.” Ex. D at 115:10-159:6 [156-208], 205:11-221:21 [Exhibit PDF page 262-81] (Rough Transcript of Rep. Hall Deposition).¹ Representative Hall testified that he personally drew nearly all of the House map enacted as House Bill 976, and that he did so over multiple days at an official computer terminal. *Id.* at 102:21-103:1 [141], 112:18-113:12 [152-53]. But Representative Hall also testified that, between his sessions at the public terminal, he repeatedly met with his then-General Counsel, Dylan Reel, and others for “strategy sessions” about the mapdrawing in a private room adjacent to the public map-drawing room. *Id.* at 133:20-134:20 [177-78].

In several of these strategy sessions, Representative Hall, Mr. Reel, and in some cases Speaker Moore’s Chief of Staff Neil Inman (and potentially others) reviewed “concept maps” of several county groupings for the House map. *Id.* at 118:4-7 [159]. Representative Hall would study these “concept maps” in the private room, and then rely on them to draw district lines for that particular county cluster on the public terminal. *Id.* at 122:4-123:15 [164-65]. In at least “a couple” of instances, Mr. Reel accompanied Representative Hall into the public map-drawing room and displayed an image of a “concept map” on his smartphone while Representative Hall drew the district lines on the public terminal. *Id.* at 212:19-213:16 [270-71]. Representative Hall testified that, to the best of his recollection, he relied on these concept maps for “around five” House county clusters in total, including Wake County, Pitt County, the Forsyth-Stokes

¹ The attached exhibits contain a rough transcript of Representative Hall’s deposition provided by the court reporter yesterday as a .txt file. Because the original transcript page numbers do not correspond with the page numbers of the PDF of attached exhibits, Plaintiffs have also provided the PDF page number in brackets.

county cluster, and (potentially) Mecklenburg County, and possibly others. *Id.* at 125:1-129:21 [167-72].

All of the private “concept maps” were drawn by Mr. Reel. *Id.* at 117:15-18 [158]. From August 2021 until this December, Mr. Reel was General Counsel to Representative Hall as Chair of the Rules Committee and Redistricting Committee; he is now a lobbyist and consultant at McGuire Woods. *Id.* at 214:21-215:4 [272-73]. Mr. Reel did not use the public computer terminals set up in the House Committee room to draw the “concept maps.” *Id.* at 117:21-25 [158-59]. Representative Hall did not know which redistricting software Mr. Reel used to draw the “concept maps.” *Id.* at 142:24-145:24 [177-92]. Representative Hall acknowledged that some popular map-drawing software comes pre-loaded with election data and racial data, and he testified that could not be sure whether the “concept maps” were drawn using that type of software. *Id.* Yet Representative Hall made no effort to verify that the “concept maps” had not been drawn using election data or racial data—or indeed to verify more broadly that his staff had not consulted election or racial data. *Id.* at 114:20-115:9 [155-56]. Representative Hall, Mr. Reel, and Mr. Inman viewed these “concept maps” on a laptop computer in their private meeting room, outside of the public map-drawing room and away from the videocameras set up to record and livestream the map-drawing process. *Id.* at 140:21-25 [185-86]. Representative Hall did not know whose computer was being used to create and display the “concept maps,” but he “assume[d]” it was Mr. Reel’s. *Id.* at 140:11-20 [185].

Representative Hall testified that, unlike maps drawn on the public terminals, these “concept maps” *are not publicly available*. *Id.* at 150:9-20 [197]. There is no public information—no video, no audio, no meeting notes, no list of attendees, nothing—about Representative Hall’s and Mr. Reel’s “strategy sessions” during which these “concept maps”

were developed and discussed, or about the “concept maps” themselves. *Id.* at 145:25-146:8, 150:9-15, 151:19 [191-98]. These strategy sessions were ad hoc, not “scheduled at all.” *Id.* at 124:14-17 [166].

Yesterday evening—following Representative Hall’s deposition and after this Court granted Plaintiffs’ motion to compel—counsel for *Harper* Plaintiffs emailed Legislative Defendants’ counsel to clarify that their first interrogatory “encompasses every person who participated in any way in Representative Hall’s meetings with Dylan Reed and/or others outside the official mapdrawing room during the period Representative Hall was working on the House plan, as well as anyone who assisted in any way or provided input, directly or indirectly, to any such person regarding districts in the 2021 Plans.” Ex. C at 1. Likewise, *Harper* Plaintiffs clarified that their second Interrogatory and first Request for Production encompassed “any electronic or hard copy documents related to any such meetings, including all records of what Rep. Hall described today as ‘concept maps’ and any information or data related to such maps. This would include, without limitation, copies of all files or data or images on the computer(s) and/or smartphone(s) used in connection with those meetings, including any partisan or racial data, and any electronic records of any analysis of any concept maps, other draft maps, or the enacted House map.” *Id.*

C. Legislative Defendants’ Inadequate Discovery Responses

Legislative Defendants served responses this morning. Notwithstanding their assertion in an email to Plaintiffs and in a filing with this Court that all the information sought by Plaintiffs was “publicly available,” Legislative Defendants identified a number of third parties, other than legislators, who participated in drawing maps and whose participation was not publicly available. Ex. E at 5. In their response to *Harper* Plaintiffs’ interrogatories, Legislative Defendants acknowledged that Representative Hall relied on “concept maps” of certain House county

groupings during the map-drawing period. Ex. E at 6. Legislative Defendants asserted that “no partisan or racial data was used or relied upon by Defendants,” but that they “cannot speak for ... the ... third parties identified above,” such as Mr. Reel and Mr. Inman. *Id.* In response to the same interrogatory, however, Legislative Defendants also asserted that “Defendant Hall and Mr. Reel did not use any racial or political data in preparing these concept maps.” *Id.* But according to Legislative Defendants, “[n]either Defendant Hall nor the other Legislative Defendants have copies of these concept maps or any information or data related to such maps.” *Id.* at 6-7 (emphasis added).

This response does not make clear whether Mr. Reel (as opposed to Legislative Defendants themselves) still has the “concept maps,” or any record of them, or any information or data related to them, on either a computer or a smartphone or both. And Legislative Defendants provided no other explanation for their failure to produce this information in response to *Harper* Plaintiffs’ requests, as the Court ordered. Likewise, in response to Plaintiffs’ request for production of documents, Legislative Defendants provided only a bullet-point list of “publicly available documents/data,” including files on the General Assembly website and videos of public hearings on YouTube. Ex. F at 4. They did not produce or even mention any “concept maps” or any information or data related to such maps.

ARGUMENT

Legislative Defendants have refused to produce “concept maps” and associated data that were prepared by a member of Representative Hall’s staff, using an unknown computer and unknown redistricting software, reviewed during private “strategy sessions” with Representative Hall and others, and then used by Representative Hall in formulating the enacted 2021 House plan. Legislative Defendants have done so despite Plaintiffs’ issuance of discovery requests that

clearly encompass those “concept maps” and any related data or information, and despite the Court’s December 27 order directing Legislative Defendants to provide responses earlier today. Legislative Defendants’ incomplete and inadequate discovery responses are impeding access to highly probative information that, as this Court has explained, “goes to the heart of the dispute in this redistricting litigation.” Order on Mot. Compel 4. Legislative Defendants should be ordered to provide adequate responses. To the extent they fail to do so promptly, sanctions such as adverse inferences, preclusion of testimony or evidence, and other remedies are warranted.

In particular, Legislative Defendants have not disputed that the “concept maps” prepared by Mr. Reel and considered and relied upon by Representative Hall, as well as all related data and information, are relevant to Plaintiffs’ claims, or that they fall within the category of information Plaintiffs requested. Instead, Legislative Defendants’ sole apparent reason for refusing to produce this information is that “[n]either Defendant Hall nor the other Legislative Defendants *have* copies of these concept maps or any information or data related to such maps.” Ex. E at 6 (emphasis added).

That response is plainly inadequate under Rule 34. Legislative Defendants must produce the “concept maps” and related data because these materials are in Legislative Defendants’ “*possession, custody or control.*” Ex. B at 3 (defining “Document”). That is true even if Legislative Defendants do not presently “have” physical custody of these materials. Rule 34(a) expressly authorizes requests for matters “in the possession, custody or control of the party upon whom the request is served.” And it is blackletter law that “‘documents are deemed to be within the possession, custody or control of a party for purposes of Rule 34 if the party has actual possession, custody or control of the materials *or has the legal right to obtain the documents on demand.*’” *Lowd v. Reynolds*, 205 N.C. App. 208, 214 (2010) (emphasis added) (quoting *Pugh*

v. Pugh, 113 N.C.App. 375, 380–81, 438 S.E.2d 214, 218 (1994)). For example, if a party creates tapes and transcripts, and then gives them to an attorney for review, “the tapes and the transcripts, though not in [party]’s actual possession, were within her control and custody, such that she could have obtained them from her attorney.” *Pugh*, 113 N.C.App. at 381. “Any other result would encourage clients to hide otherwise discoverable items with their attorneys in an effort to frustrate discovery.” *Id.*

Courts applying the broad standard for “possession, custody or control” frequently require employers to produce current and former employees’ work-related documents and communications stored in personal accounts or on personal devices—for example, “e-mails contained within [an employee’s] personal Gmail account.” *Chevron Corp. v. Salazar*, 275 F.R.D. 437, 448 (S.D.N.Y. 2011), *objections overruled*, 2011 WL 13243797 (S.D.N.Y. Aug. 16, 2011); *see also, e.g., Montesa v. Schwartz*, 2015 WL 13173164, at *1 (S.D.N.Y. Feb. 20, 2015) (“The Defendant District must search its employees’ official email accounts and any employee’s personal email account and personal device used to conduct the school district’s business.”).

Under these established principles, the “concept maps” and any data or information related to them is plainly within Legislative Defendants’ legal custody or control. These concept maps undisputedly were drawn by Mr. Reel while he was working as General Counsel for Representative Hall. Mr. Reel served in that position during the entire redistricting period, from August until earlier this month. Representative Hall viewed the “concept maps” on a laptop inside a legislative office, just outside the public map-drawing room, in the middle of Representative Hall’s various sessions drawing the House map at a public terminal, and Mr. Reel had images of at least some of the concept maps on his smartphone. These “concept maps” and any accompanying data are legislative records, developed and considered during “strategy

sessions” among legislators and their staff, no matter whose device they were on. That is obviously true if the maps were drawn or stored on an electronic device issued by the legislature (which may have been the case, though it is unclear because Representative Hall did not know whose computer it was). But even if created or stored on Mr. Reel’s personal device, Legislative Defendants must produce these materials because—as is clear from Representative Hall’s testimony—Mr. Reel used that device for work-related purposes. Rule 34 does not permit Legislative Defendants to say that they lack possession and call it quits.

If the reason underlying Legislative Defendants’ refusal is instead that this critically important information has been *lost or destroyed*, Legislative Defendants should be required to certify to that effect and to provide an explanation for the loss or destruction. If any of this information has been lost or destroyed, or if Legislative Defendants otherwise continue to refuse to produce it, Legislative Defendants should further be required to show cause why appropriate sanctions should not issue for spoliation and/or failure to comply with the Court’s order compelling responses to *Harper* Plaintiffs’ discovery requests. Such sanctions could include, without limitation, an adverse inference regarding the contents of the requested information and an order precluding Legislative Defendants from offering testimony or evidence about the creation of the enacted House plan and what data were or were not used to draw it. *See, e.g., McLain v. Taco Bell Corp.*, 137 N.C. App. 179, 186 (2000) (requiring adverse-inference instruction based on employer’s destruction of logbook); *In re Pradaxa (Dabigatran Etexilate) Prod. Liab. Litig.*, 2013 WL 6486921, at *19 (S.D. Ill. Dec. 9, 2013), *rescinded on other grounds*, 745 F.3d 216 (7th Cir. 2014) (sanctions where company “failed to ensure that the auto delete feature of their employee cell phones, company owned and personal, was disengaged for the purpose of preserving text messages”).

* * *

In addition to the issues described above, only two of the Legislative Defendants—Representative Hall and Senator Hise—have verified the interrogatory responses. Earlier today, *Harper* Plaintiffs asked Legislative Defendants to confirm that the other four Legislative Defendants were not providing verifications because they objected to the requests and refused to answer them on the basis of legislative privilege, and that the representations in the interrogatory responses accordingly were being provided solely as to Representative Hall and Senator Hise. Ex. G. For instance, *Harper* Plaintiffs sought confirmation that the representation, “Defendants state that no partisan or racial data was used or relied upon by Defendants,” described only Representative Hall and Senator Hise, and that the other four Legislative Defendants were making no such representation. *Id.* As *Harper* Plaintiffs explained, to the extent the other four Legislative Defendants are making representations about what data they did or did not consider in the mapdrawing process, they have waived legislative privilege as to such information, contrary to the position they took previously to block their depositions. *Id.*

As of the filing of this motion, Legislative Defendants have not responded to *Harper* Plaintiffs’ inquiry. Accordingly, in light of the failure of the other four Legislative Defendants to provide verifications, the Court should order that the responses Legislative Defendants served today constitute representations only of Representative Hall and Senator Hise, and that none of the responses should be understood as making representations about any of the other four Legislative Defendants. Absent such relief, Legislative Defendants would be using legislative privilege as a shield (to block discovery from four of them) and a sword (to permit Representative Hall and Senator Hise to represent what data those other four did or did not consider in the mapmaking process).

CONCLUSION

Plaintiffs respectfully request that the Court order Legislative Defendants to fully respond to the interrogatories and document requests by December 29 at 12 p.m. If the concept maps or any related information identified in Legislative Defendants' response to Interrogatory No. 2 have been lost or destroyed, Legislative Defendants should be required to identify the lost or destroyed material with specificity and certify to that loss or destruction, and to show cause why appropriate sanctions should not issue, by December 29 at 12 p.m. The Court should further order that Legislative Defendants' responses served today constitute representations only of Representative Hall and Senator Hise, and not of the other Legislative Defendants, who have not provided verifications.

Respectfully submitted, this the 28th day of December, 2021.

By: /s/ Narendra K. Ghosh

PATTERSON HARKAVY LLP

Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Harper Plaintiffs

ELIAS LAW GROUP LLP

Abha Khanna*
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
AKhanna@elias.law

Lalitha D. Madduri*
Jacob D. Shelly*
Graham W. White
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

Elisabeth S. Theodore
R. Stanton Jones*
Samuel F. Callahan
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
elisabeth.theodore@arnoldporter.com

Counsel for Harper Plaintiffs
**Pro hac vice motion pending*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to counsel for all other parties.

This the 28th day of December, 2021.

/s/ Narendra K. Ghosh
Narendra K. Ghosh, NC Bar No. 37649

Electronically Filed
2021-12-28 17:45:17

EXHIBIT A

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 21 CVS 015426
No. 21 CVS 500085

NORTH CAROLINA LEAGUE OF CONSERVATION
VOTERS, INC., *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

COMMON CAUSE,

Plaintiff,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

***HARPER PLAINTIFFS’
SECOND SET OF
INTERROGATORIES TO
LEGISLATIVE
DEFENDANTS***

NOW COME PLAINTIFFS, by and through their undersigned counsel, and hereby serve upon the Legislative Defendants (“Defendants” or “You”) the following Plaintiffs’ Second Set of Interrogatories (“Request”) pursuant to Rules 26 and 33 of the North Carolina Rules of Civil Procedure. Unless otherwise stated, you are required to provide a complete written response to each interrogatory, under oath, within 30 days after the service of this Request, except that you may serve a response within 45 days after service of the Summons and Complaint upon you. If you object to a specific interrogatory, the reasons for the objection must be stated with particularity. If objection is made to part of an interrogatory, the part shall be specified.

You are required, when responding to this Request, to furnish all information available to you, to your attorneys or agents, or to anyone acting on your behalf or on behalf of your attorneys, or your agents.

For purposes of responding to this Request, you shall use the instructions and definitions contained herein. The Request shall be continuing in nature until the date of trial, and Defendants are required to serve supplemental responses as additional information may become available to them.

INSTRUCTIONS

For the purposes of this Request, the following instructions shall apply as set forth below except as otherwise required by context:

1. **BE ADVISED** that under Rule 37 of the North Carolina Rules of Civil Procedure, if you fail to respond to a request made herein under Rule 33, or if you give an evasive or incomplete response, the Plaintiffs may move for a court order compelling you to respond. If such motion is granted, the court may require you to pay the reasonable costs incurred in obtaining the order, including attorneys’ fees. Failure to comply with such a court order may result in further sanctions or in contempt of court.
2. Words used in the singular number shall include the plural number, and words used in the plural number shall refer to the singular number as well.
3. If any Request is objected to on the grounds of its being overly broad or unduly burdensome, state the manner in which it is overly broad or unduly burdensome and respond to the Request as narrowed to conform to such objection.
4. **If any documents, communications, ESI, or responses are withheld on the ground of any privilege, identify the following:**
 - A. the names and addresses of the speaker or author of the communication or document that forms the basis for the withheld response;
 - B. the date of the communication or document;
 - C. the name and address of any person to whom the communication was made or the document was sent or to whom copies were sent or circulated at any time;

- D. the type of document or communication (e.g., letter, memorandum, invoice, contract, etc.);
- E. the name and address of any person currently in possession of the document or a copy thereof; and
- F. the privilege claimed and specific grounds therefor.

DEFINITIONS

For purposes of these Requests, the following definitions shall apply except as otherwise required by context:

1. “Identify,” “identifying,” and “identification,” when referring to a person, mean to provide an identification sufficient to notice a deposition of such person and to serve such person with process to require his or her attendance at a place of examination and shall include, without limitation, his or her full name, present or last known address, present or last known business affiliation, home and business telephone number, title or occupation, and each of his or her business or employment positions or affiliations during the period of time in which the 2021 Plans were being created.
2. “2021 Plans Criteria” means the criteria for drawing the 2021 Plans adopted by the House Committee on Redistricting and Senate Committee on Redistricting and Elections on August 12, 2021.
3. “2021 Plans” mean the 2021 redistricting plans for the North Carolina House of Representatives, North Carolina Senate, and North Carolina delegation to the U.S. House of Representatives that were passed by the North Carolina General Assembly in November 2021.

INTERROGATORIES

1. Identify, **by 5 p.m. on December 23, 2021**, each person who, to your knowledge, took part in the drawing of the 2021 Plans, including each person who had any involvement in (a) the development, formulation, discussion, consideration, assessment, review, drawing, revision, negotiation, and/or adoption of the 2021 Plans and/or the 2021 Plans Criteria; (b) assisting Legislative Defendants, directly or indirectly, in conducting any of the activities described in subsection (a); or (c) providing input, directly or indirectly, to any Legislative Defendant, to their staff, or to employees of the General Assembly on the 2021 Plans and/or the 2021 Plans Criteria. This request covers individuals including, but not limited to, legislative staff members and contractors, legal counsel, members of political organizations, and outside consultants of any kind, including outside political consultants or outside mapmakers.

RESPONSE:

2. Identify, **by 5 p.m. on December 23, 2021**, all documents or data relied upon or otherwise considered by any Legislative Defendant or by any person identified in response to Interrogatory No. 1 above in connection with the creation of the 2021 Plans, including but not limited to draft redistricting plans (whether partial or complete), analysis of or relating to the 2021 Plans or drafts thereof, election or other partisan data, racial data, or any other data.

RESPONSE:

Dated: December 21, 2021

By: /s/ Burton Craige

PATTERSON HARKAVY LLP

Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Harper Plaintiffs

ELIAS LAW GROUP LLP

Abha Khanna*
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
AKhanna@elias.law

Lalitha D. Madduri*
Jacob D. Shelly*
Graham W. White
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

Elisabeth S. Theodore
R. Stanton Jones*
Samuel F. Callahan
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
elisabeth.theodore@arnoldporter.com

Counsel for Harper Plaintiffs

**Pro hac vice motion pending*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to counsel for all other parties.

This the 21st day of December, 2021.

/s/ Samuel F. Callahan
Samuel F. Callahan (admitted pro hac vice)

EXHIBIT B

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 21 CVS 015426
No. 21 CVS 500085

NORTH CAROLINA LEAGUE OF CONSERVATION
VOTERS, INC., *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

COMMON CAUSE,

Plaintiff,

v.

REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL
CAPACITY AS SENIOR CHAIR OF THE HOUSE
STANDING COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

***HARPER* PLAINTIFFS’
FIRST SET OF REQUESTS
FOR PRODUCTION TO
LEGISLATIVE
DEFENDANTS**

NOW COME PLAINTIFFS, by and through their undersigned counsel, and hereby serve upon the Legislative Defendants (“Defendants” or “You”) the following Plaintiffs’ First Set of Requests for Production of Documents (“Request”) pursuant to Rules 26 and 34 of the North Carolina Rules of Civil Procedure. Unless otherwise stated, you are required to produce the following documents and things requested for inspection and copying at the offices of Patterson Harkavy LLP, 100 Europa Dr., Suite 420, Chapel Hill, NC 27517 within 30 days after the services of this Request, except that you may serve a response within 45 days after service of the Summons and Complaint upon you. The response to the Request must state that inspection, copying, and related activities will be permitted as requested with respect to each item or category of document, unless the request is objected to, in which event, the reasons for the objection must be stated with particularity.

You are required, when responding to this Request, to furnish all information available to you, to your attorneys or agents, or to anyone acting on your behalf or on behalf of your attorneys, or your agents. Unless stated otherwise, this Request calls for the production of all responsive documents in your possession, custody, or control without regard to where the documents may be physically located, and without regard to who prepared or delivered the documents.

For purposes of responding to this Request, you shall use the instructions and definitions contained herein. The Request shall be continuing in nature until the date of trial.

INSTRUCTIONS

For the purposes of this Request, the following instructions shall apply as set forth below except as otherwise required by context:

1. **BE ADVISED** that under Rule 37 of the North Carolina Rules of Civil Procedure, if you fail to respond to a request made herein under Rule 34, or if you give an evasive or incomplete response, the Plaintiffs may move for a court order compelling you to respond. If such motion is granted, the court may require you to pay the reasonable costs incurred in obtaining the order, including attorneys’ fees. Failure to comply with such a court order may result in further sanctions or in contempt of court.
2. Words used in the singular number shall include the plural number, and words used in the plural number shall refer to the singular number as well.
3. If any Request is objected to on the grounds of its being overly broad or unduly burdensome, state the manner in which it is overly broad or unduly burdensome and respond to the Request as narrowed to conform to such objection.
4. **If any documents, communications, ESI, or responses are withheld on the ground of any privilege**, identify the following:
 - A. the names and addresses of the speaker or author of the communication or document that forms the basis for the withheld response;

- B. the date of the communication or document;
- C. the name and address of any person to whom the communication was made or the document was sent or to whom copies were sent or circulated at any time;
- D. the type of document or communication (e.g., letter, memorandum, invoice, contract, etc.);
- E. the name and address of any person currently in possession of the document or a copy thereof; and
- F. the privilege claimed and specific grounds therefor.

DEFINITIONS

For purposes of these Requests, the following definitions shall apply except as otherwise required by context:

1. “Document” is used in its broadest sense and is intended to be comprehensive and to include, without limitation, a record, in whatever medium (*e.g.*, paper, computerized format, e-mail, photograph, audiotape) it is maintained, and includes originals and each and every non-identical copy of all writings of every kind, including drafts, legal pleadings, brochures, circulars, advertisements, letters, internal memoranda, minutes, notes or records of meetings, reports, comments, affidavits, statements, summaries, messages, worksheets, notes, correspondence, diaries, calendars, appointment books, registers, travel records, tables, calculations, books of account, budgets, bookkeeping or accounting records, telephone records, tables, stenographic notes, financial data, checks, receipts, financial statements, annual reports, accountants’ work papers, analyses, forecasts, statistical or other projections, newspaper articles, press releases, publications, tabulations, graphs, charts, maps, public records, telegrams, books, facsimiles, agreements, opinions or reports of experts, records or transcripts of conversations, discussions, conferences, meetings or interviews, whether in person or by telephone or by any other means and all other forms or types of written or printed matter or tangible things on which any words, phrases, or numbers are affixed, however produced or reproduced and wherever located, which are in Your possession, custody or control. The term “Document” includes electronic mail and attachments, data processing or computer printouts, tapes, documents contained on floppy disks, hard disks, computer hard drives, CDs, and DVDs, or retrieval listings, together with programs and program documentation necessary to utilize or retrieve such information, and all other mechanical or electronic means of storing or recording information, as well as tape, film or cassette sound or visual recordings and reproduction for film impressions of any of the aforementioned writings.
2. A request seeking production of communications between you and an individual or entity includes communications between you and the individual or entity’s agents, officers, members, employees, consultants, or representatives.

REQUESTS

1. Produce, **by 5 p.m. on December 23, 2021**, all documents and data identified in your response to *Harper* Plaintiffs’ Interrogatory No. 2 to Legislative Defendants, served on December 21, 2021.

Dated: December 21, 2021

By: /s/ Burton Craige

PATTERSON HARKAVY LLP

Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Counsel for Harper Plaintiffs

ELIAS LAW GROUP LLP

Abha Khanna*
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
AKhanna@elias.law

Lalitha D. Madduri*
Jacob D. Shelly*
Graham W. White
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

**ARNOLD AND PORTER
KAYE SCHOLER LLP**

Elisabeth S. Theodore
R. Stanton Jones*
Samuel F. Callahan
601 Massachusetts Avenue NW
Washington, DC 20001-3743
(202) 954-5000
elisabeth.theodore@arnoldporter.com

Counsel for Harper Plaintiffs
**Pro hac vice motion pending*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to counsel for all other parties.

This the 21st day of December, 2021.

/s/ Samuel F. Callahan
Samuel F. Callahan (admitted pro hac vice)

EXHIBIT C

Callahan, Sam

From: Jones, Stanton
Sent: Monday, December 27, 2021 8:25 PM
To: Phil Strach; Theodore, Elisabeth; Callahan, Sam
Cc: McKnight, Katherine L.; Steed, Terence; zzz.External.akhanna@elias.law; zzz.External.lmadduri@elias.law; zzz.External.jshelly@elias.law; zzz.External.gwhite@elias.law; allison@southerncoalition.org; Hilary H. Klein; Alyssa Riggins; Mitchell D. Brown; Katelin Kaiser; jeffloperfido@scsj.org; Adam Doerr; Narendra Ghosh; Brennan, Stephanie; Burton Craige; Erik R. Zimmerman; Majmundar, Amar; Paul Smith; Stephen Feldman; Tom Farr; Babb, Mary Carla (Hollis); Braden, E. Mark; Raile, Richard; Lewis, Patrick T.; John Branch; Schauf, Zachary C.; Hirsch, Sam; Amunson, Jessica Ring; Bracey, Kali N.; Mittal, Urja R.; Molodanof, Olivia; Boer, Tom; Martin Warf; Greg McGuire; Nate Pencook; Cella, John
Subject: RE: NCLCV v Hall (21 CVS 15426) -- Harper Pls 2d Interrogatories and 1st RFPs to LDs

Phil: In light of Rep. Hall's deposition testimony today, and for the avoidance of doubt, please note that our Interrogatory No. 1 clearly encompasses every person who participated in any way in Representative Hall's meetings with Dylan Reed and/or others outside the official mapdrawing room during the period Representative Hall was working on the House plan, as well as anyone who assisted in any way or provided input, directly or indirectly, to any such person regarding districts in the 2021 Plans. Similarly, our Interrogatory No. 2 and RFP No. 1 clearly encompass any electronic or hard copy documents related to any such meetings, including all records of what Rep. Hall described today as "concept maps" and any information or data related to such maps. This would include, without limitation, copies of all files or data or images on the computer(s) and/or smartphone(s) used in connection with those meetings, including any partisan or racial data, and any electronic records of any analysis of any concept maps, other draft maps, or the enacted House map. Needless to say, our requests also encompass any other persons or electronic or hard copy materials from any other work done by Legislative Defendants or others outside of the public mapdrawing room.

We look forward to receiving your responses tomorrow morning.

Regards,
Stanton

From: Jones, Stanton
Sent: Monday, December 27, 2021 3:39 PM
To: 'Phil Strach' <phil.strach@nelsonmullins.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>
Cc: McKnight, Katherine L. <kmcknight@bakerlaw.com>; Steed, Terence <Tsteed@ncdoj.gov>; zzz.External.akhanna@elias.law <akhanna@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; allison@southerncoalition.org; Hilary H. Klein <hilaryhklein@scsj.org>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Mitchell D. Brown <mitchellbrown@scsj.org>; Katelin Kaiser <katelin@scsj.org>; jeffloperfido@scsj.org; Adam Doerr <ADoerr@robinsonbradshaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Erik R. Zimmerman <ezimmerman@robinsonbradshaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Paul Smith <psmith@pathlaw.com>; Stephen Feldman <SFeldman@robinsonbradshaw.com>; Tom Farr <tom.farr@nelsonmullins.com>; Babb, Mary Carla (Hollis) <MCBabb@ncdoj.gov>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; Lewis, Patrick T. <plewis@bakerlaw.com>; John Branch <john.branch@nelsonmullins.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Hirsch, Sam <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Bracey, Kali N. <KBracey@jenner.com>;

Mittal, Urja R. <UMittal@jenner.com>; Molodanof, Olivia <olivia.molodanof@hoganlovells.com>; Boer, Tom <tom.boer@hoganlovells.com>; Martin Warf <martin.warf@nelsonmullins.com>; Greg McGuire <greg.mcguire@nelsonmullins.com>; Nate Pencook <nate.pencook@nelsonmullins.com>; Cella, John <John.Cella@arnoldporter.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Harper Pls 2d Interrogatories and 1st RFPs to LDs

Phil: As you know, Representative Hall testified at deposition today that he consulted “concept maps” in private meetings with his staff and others outside the public terminal room, which were drawn by a member of his staff, Dylan Reel, using an unknown computer and unknown redistricting software. Representative Hall testified that he relied on these concept maps when drawing district lines for the House map on the public terminal—and that in fact he viewed images of concept maps on Mr. Reel’s phone while drawing on the public terminal—but that none of the concept maps are publicly available, and none of the private meetings to discuss concept maps (or even a list of attendees) were publicly noticed or recorded.

In light of today’s testimony, is it still your position that our motion to compel is unnecessary because all of the information we have requested is “publicly available at www.ncleg.gov and YouTube (NCGA Redistricting - YouTube)”? Will you be withdrawing your representation to that effect at pages 5-6 of the opposition you filed this afternoon? Please let us know as soon as you can so that we can raise the issue to the Court if necessary.

Regards,
Stanton

From: Phil Strach <phil.strach@nelsonmullins.com>

Sent: Monday, December 27, 2021 8:13 AM

To: Jones, Stanton <Stanton.Jones@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>

Cc: McKnight, Katherine L. <kmcknight@bakerlaw.com>; Steed, Terence <Tsteed@ncdoj.gov>; zzz.External.akhanna@elias.law <akhanna@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; allison@southerncoalition.org; Hilary H. Klein <hilaryhklein@scsj.org>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Mitchell D. Brown <mitchellbrown@scsj.org>; Katelin Kaiser <katelin@scsj.org>; jeffloperfido@scsj.org; Adam Doerr <ADoerr@robinsonbradshaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Erik R. Zimmerman <ezimmerman@robinsonbradshaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Paul Smith <psmith@pathlaw.com>; Stephen Feldman <SFeldman@robinsonbradshaw.com>; Tom Farr <tom.farr@nelsonmullins.com>; Babb, Mary Carla (Hollis) <MCBabb@ncdoj.gov>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Lewis, Patrick T. <plewis@bakerlaw.com>; John Branch <john.branch@nelsonmullins.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Hirsch, Sam <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Bracey, Kali N. <KBracey@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>; Molodanof, Olivia <olivia.molodanof@hoganlovells.com>; Boer, Tom <tom.boer@hoganlovells.com>; Martin Warf <martin.warf@nelsonmullins.com>; Greg McGuire <greg.mcguire@nelsonmullins.com>; Nate Pencook <nate.pencook@nelsonmullins.com>; Cella, John <John.Cella@arnoldporter.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Harper Pls 2d Interrogatories and 1st RFPs to LDs

External E-mail

Stanton: Your email below is not a proper response to my response. We are simply following the North Carolina Rules of Civil Procedure (specifically N.C. R. Civ. P. 33(a), 34(b)). Please do the same. Thank you. Phil



PHILLIP J. STRACH **PARTNER**

phil.strach@nelsonmullins.com

GLENLAKE ONE | SUITE 200

4140 PARKLAKE AVENUE | RALEIGH, NC 27612

T 919.329.3812 F 919.329.3799

NELSONMULLINS.COM [VCARD](#) [VIEW BIO](#)

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>

Sent: Sunday, December 26, 2021 5:42 PM

To: Phil Strach <phil.strach@nelsonmullins.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>

Cc: McKnight, Katherine L. <kmcknight@bakerlaw.com>; Steed, Terence <Tsteed@ncdoj.gov>; akhanna@elias.law; Imadduri@elias.law; jshelly@elias.law; gwhite@elias.law; allison@southerncoalition.org; Hilary H. Klein <hilaryhklein@scsj.org>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Mitchell D. Brown <mitchellbrown@scsj.org>; Katelin Kaiser <katelin@scsj.org>; jeffloperfido@scsj.org; Adam Doerr <ADoerr@robinsonbradshaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Erik R. Zimmerman <ezimmerman@robinsonbradshaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Paul Smith <psmith@pathlaw.com>; Stephen Feldman <SFeldman@robinsonbradshaw.com>; Tom Farr <tom.farr@nelsonmullins.com>; Babb, Mary Carla (Hollis) <MCBabb@ncdoj.gov>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Lewis, Patrick T. <plewis@bakerlaw.com>; John Branch <john.branch@nelsonmullins.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Hirsch, Sam <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Bracey, Kali N. <KBracey@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>; Molodanof, Olivia <olivia.molodanof@hoganlovells.com>; Boer, Tom <tom.boer@hoganlovells.com>; Martin Warf <martin.warf@nelsonmullins.com>; Greg McGuire <greg.mcguire@nelsonmullins.com>; Nate Pencook <nate.pencook@nelsonmullins.com>; Cella, John <John.Cella@arnoldporter.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Harper Pls 2d Interrogatories and 1st RFPs to LDs

Phil: Your email below is not a proper response to our written discovery requests. Under the circumstances, Legislative Defendants cannot reasonably rely on the ordinary 30-day window to respond to discovery requests, which in this case would be after the trial is over; in any event, if Legislative Defendants intended to object on timing grounds, they should have let us know days ago when the requests were served. And substantively, simply pointing to the General Assembly's website and YouTube is plainly not an adequate response. We served an interrogatory and requests for production on all Legislative Defendants seeking information and materials that are not publicly available. Please provide proper responses and objections, as well as all responsive, non-privileged documents, by 9:30am tomorrow (Monday, December 27). If not, we will seek relief from the Court.

Regards,
Stanton

From: Phil Strach <phil.strach@nelsonmullins.com>

Sent: Friday, December 24, 2021 11:40 AM

To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>

Cc: McKnight, Katherine L. <kmcknight@bakerlaw.com>; Steed, Terence <Tsteed@ncdoj.gov>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; zxx.External.akhanna@elias.law <akhanna@elias.law>; zxx.External.Imadduri@elias.law <Imadduri@elias.law>; zxx.External.jshelly@elias.law <jshelly@elias.law>;

zzz.External.gwhite@elias.law <gwhite@elias.law>; allison@southerncoalition.org; Hilary H. Klein <hilaryhklein@scsj.org>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Mitchell D. Brown <mitchellbrown@scsj.org>; Katelin Kaiser <katelin@scsj.org>; jeffloperfido@scsj.org; Adam Doerr <ADoerr@robinsonbradshaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Erik R. Zimmerman <ezimmerman@robinsonbradshaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Paul Smith <psmith@pathlaw.com>; Stephen Feldman <SFeldman@robinsonbradshaw.com>; Tom Farr <tom.farr@nelsonmullins.com>; Babb, Mary Carla (Hollis) <MCBabb@ncdoj.gov>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Lewis, Patrick T. <plewis@bakerlaw.com>; John Branch <john.branch@nelsonmullins.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Hirsch, Sam <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Bracey, Kali N. <KBracey@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>; Molodanof, Olivia <olivia.molodanof@hoganlovells.com>; Boer, Tom <tom.boer@hoganlovells.com>; Martin Warf <martin.warf@nelsonmullins.com>; Greg McGuire <greg.mcguire@nelsonmullins.com>; Nate Pencook <nate.pencook@nelsonmullins.com>; Cella, John <John.Cella@arnoldporter.com>

Subject: RE: NCLCV v Hall (21 CVS 15426) -- Harper Pls 2d Interrogatories and 1st RFPs to LDs

External E-mail

Elisabeth:

The NCLCV optimized maps and associated data were required to be produced pursuant to the Scheduling Order. Under the North Carolina Rules of Civil Procedure, responses to written discovery responses are due 30 days after service unless the Court shortens the time. N.C. R. Civ. P. 33(a), 34(b). In any event, because of the historically transparent redistricting process used by the General Assembly the information requested in the discovery requests is publicly available at www.ncleg.gov and YouTube ([NCGA Redistricting - YouTube](#)).

Thanks.

Phil



PHILLIP J. STRACH **PARTNER**

phil.strach@nelsonmullins.com

GLENLAKE ONE | SUITE 200

4140 PARKLAKE AVENUE | RALEIGH, NC 27612

T 919.329.3812 F 919.329.3799

NELSONMULLINS.COM [VCARD](#) [VIEW BIO](#)

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Sent: Friday, December 24, 2021 9:33 AM

To: Callahan, Sam <Sam.Callahan@arnoldporter.com>

Cc: McKnight, Katherine L. <kmcknight@bakerlaw.com>; Steed, Terence <Tsteed@ncdoj.gov>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; akhanna@elias.law; lmadduri@elias.law; jshelly@elias.law; gwhite@elias.law; allison@southerncoalition.org; Hilary H. Klein <hilaryhklein@scsj.org>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Mitchell D. Brown <mitchellbrown@scsj.org>; Katelin Kaiser <katelin@scsj.org>; jeffloperfido@scsj.org; Adam Doerr <ADoerr@robinsonbradshaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Erik R. Zimmerman

<ezimmerman@robinsonbradshaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Paul Smith <psmith@pathlaw.com>; Phil Strach <phil.strach@nelsonmullins.com>; Stephen Feldman <SFeldman@robinsonbradshaw.com>; Tom Farr <tom.farr@nelsonmullins.com>; Babb, Mary Carla (Hollis) <MCBabb@ncdoj.gov>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Lewis, Patrick T. <plewis@bakerlaw.com>; John Branch <john.branch@nelsonmullins.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Hirsch, Sam <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Bracey, Kali N. <KBracey@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>; Molodanof, Olivia <olivia.molodanof@hoganlovells.com>; Boer, Tom <tom.boer@hoganlovells.com>; Martin Warf <martin.warf@nelsonmullins.com>; Greg McGuire <greg.mcguire@nelsonmullins.com>; Nate Pencook <nate.pencook@nelsonmullins.com>; Cella, John <John.Cella@arnoldporter.com>

Subject: Re: NCLCV v Hall (21 CVS 15426) -- Harper Pls 2d Interrogatories and 1st RFPs to LDs

◀External Email▶ - From: prvs=9853f3c82=Elisabeth.Theodore@arnoldporter.com

Counsel:

We haven't heard back from you about our discovery requests, which were due yesterday and sought the same information you asked for and received about the NCLCV "optimized maps," namely a list of people who was involved in drawing the plans or assisting those who did, and source data and analysis of those plans. Obviously, if you are entitled to that information about a proposed alternative map, we are entitled to that information about the actual maps that are the subject of this litigation. Are you asserting legislative privilege?

Please let us know your position by today at noon. At minimum, we need this discovery by Sunday at noon so that we can review it before Rep. Hall's deposition.

Thanks,
Elisabeth

On Dec 21, 2021, at 11:15 AM, Callahan, Sam <Sam.Callahan@arnoldporter.com> wrote:

Counsel: Please find attached *Harper* Plaintiffs' Second Set of Interrogatories to Legislative Defendants and First Set of Requests for Production to Legislative Defendants.

Thank you,
Sam Callahan

Sam Callahan

Associate

Arnold & Porter

601 Massachusetts Ave., NW

Washington | District of Columbia 20001-3743

T: +1 202.942.5816

Sam.Callahan@arnoldporter.com | www.arnoldporter.com

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Sent: Tuesday, December 21, 2021 10:54 AM

To: 'McKnight, Katherine L.' <kmcknight@bakerlaw.com>; Steed, Terence <Tsteed@ncdoj.gov>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; zzz.External.akhanna@elias.law <akhanna@elias.law>; zzz.External.Imadduri@elias.law

EXHIBIT D

1 ROUGH DRAFT

2

3 N O T I C E

4

5 This transcript is an UNCERTIFIED ROUGH DRAFT
6 TRANSCRIPT. It contains raw output from the court
7 reporter's stenotype machine translated into
8 English by the court reporter's computer, without
9 the benefit of proofreading. It will contain
10 untranslated steno outlines, mistranslations
11 (wrong words), and misspellings. These and any
12 other errors will be corrected in the final
13 transcript. Since this rough draft transcript has
14 not been proofread, the court reporter cannot
15 assume responsibility for any errors therein.

16

17 This rough draft transcript is intended to assist
18 attorneys in their case preparation and is not to
19 be construed as the final transcript. It is not
20 to be read by the witness or quoted in any

21 pleading or for any other purpose and may not be
22 filed with any court.

23

24

25



Page 2

1 P R O C E E D I N G S

2 - - - - -

3 THE VIDEOGRAPHER: Here begins disk number
4 one in the remote video deposition of
5 representative Destin Hall in the matter of North
6 Carolina League of Conservation Voters, et al.
7 versus Hall et al. in the General Court of Justice
8 Superior Court Division, case number 21 CVS
9 015426. Today's date is Monday, December 27th,
10 2021. The time on the video monitor is 9:11 a.m.
11 Eastern Time. The remote videographer today is
12 Michael Pietanza representing Planet Depos. All
13 parties of this video deposition are attending
14 remotely. Would counsel please voice identify
15 themselves and state whom they represent.

16 MR. CALLAHAN: Sure. This is Sam Callahan

17 from Arnold & Porter on behalf of the Harper
18 plaintiffs.

19 MR. JONES Stanton Jones from Arnold &
20 Porter, also on behalf of the Harper plaintiffs.

21 MS. BABB: This is Mary Carla Babb on
22 behalf of the State Board defendants.

23 MS. RIGGS: This is Allison Riggs from the
24 Southern Coalition of Social Justice on behalf of
25 the plaintiff Common Cause.

↑

Page 3

1 MS. KAISER: This is Katelin Kaiser,
2 attorney from Southern Coalition for Social
3 Justice on behalf of plaintiff Common Cause.

4 MS. MOLODANOF: This is Olivia Molodanof
5 from Hogan Lovells also on behalf of plaintiff
6 Common Cause.

7 MR. WHITE: Graham White from the Elias
8 Law Group on behalf of the Harper plaintiffs.

9 MS. KLEIN: Hilary Klein from the Southern
10 Coalition for Social Justice on behalf of Common
11 Cause.

12 MR. SHELLY: Jacob Shelly on behalf of the
13 Harper plaintiffs.

14 MS. BRACEY: Kali Bracey on behalf of the
15 North Carolina League of Conservation Voters from
16 Jenner and Block.

17 MS. MITTAL: Urja Mittal, also on behalf
18 of the North Carolina League of Conservation
19 Voters, from Jenner and Block.

20 MR. HAYES: Sam Hayes on behalf of the
21 House Speaker Tim Moore.

22 MS. McKNIGHT: Katherine McKnight on
23 behalf of legislative defendants from Baker
24 Hostetler.

25 MR. STRACH: And this is Phil Strach

↑

Page 4

1 Nelson Mullins on behalf of legislative
2 defendants.

3 THE VIDEOGRAPHER: Thank you, counsel.
4 The court reporter today is Jan Hamilton
5 representing Planet Depos. Would the reporter
6 please swear in the witness.

7 -----

8 DESTIN HALL,
9 a witness herein, being duly sworn, testified as
10 follows:

11 EXAMINATION BY COUNSEL FOR HARPER PLAINTIFFS
12 BY MR. CALLAHAN:

13 Q Good morning, Representative Hall. I'm
14 Sam Callahan. I represent the plaintiffs in the
15 Harper case. We're here by video conference.
16 Just a few preliminary questions. Have you ever
17 been deposed before?

18 A I have not.

19 Q And I know you're an attorney. Have you
20 ever conducted depositions or have you at least
21 generally familiar with how these work?

22 A I have conducted depositions, yes.

23 Q So I'll keep the preliminaries brief. Do
24 you understand you've taken an oath to tell the
25 truth today?

↑

1 A Sure.

2 Q And there will be a transcript of

3 everything we say so we should try not to talk
4 over each other. I'll try not to the interrupt
5 you. I just ask that you do the same. Does that
6 sound good?

7 A Yes.

8 Q And your counsel may object but you should
9 answer the question even if your counsel objects
10 unless your counsel specifically instructs you not
11 to answer the question. Do you understand that?

12 A Sure.

13 Q Any reason that today you couldn't give
14 complete, accurate and truthful testimony?

15 A No.

16 Q And if you want to take a break, just let
17 me know but I'd ask that if a question is pending
18 if you could just finish your answer to that
19 question before taking a break, I would appreciate
20 that.

21 A Okay.

22 Q What did you do to prepare for this
23 deposition today?

24 A I generally just looked back through my
25 notes. I mean it's, it's been now I guess over a



1 month since we passed these maps.

2 Q And when you say your notes, what do you
3 mean by that? Could you be more specific?

4 A Just the notes that I use when we were
5 debating the bills in the committee and on the
6 House floor.

7 Q Were these notes about the enacted maps or
8 were they notes that you used just to prepare for
9 your speeches on the floor?

10 A They were just to prepare for speech he is
11 on the floor.

12 Q Did you consult any notes that you drew up
13 during the redistricting process itself before
14 your speeches?

15 A I don't understand that question. Ask me
16 again.

17 Q Sure. I'll try to be a bit more clear.
18 In preparing for this deposition did you consult
19 materials that you prepared while drawing or, you
20 know during the redistricting process in October
21 or earlier?

22 A Yes. Those notes would have been drafted
23 at some point during that process.

24 Q Okay. Did you conduct, did you review any
25 other documents in preparing for this deposition?

↑

Page 7

1 A I looked at the maps that were, that were
2 enacted.

3 Q I just want to be sure I clarify one
4 thing. So do you have in your possession notes
5 that you prepared or that someone else prepared
6 that describe the district maps that were
7 ultimately enacted or that were used to evaluate
8 draft maps or anything of that nature?

9 A No no. I, these were just notes that were
10 used on the for floor speech purposes.

11 Q Okay. I thought just a bit earlier you
12 said that will there were notes that you prepared
13 maybe as early as October or before that. Is that
14 not the case?

15 A They would have been sometime during the
16 process, before I had to present them. I had to
17 present maps in, in the committee before they were
18 on the floor. So whenever we presented those in

19 the committee that those notes would have likely
20 been drafted at some point shortly before that.

21 Q And I guess just, just a more general
22 question. Did you have any notes during the map
23 drawing process?

24 A No. I don't, I don't recall taking any
25 notes during the process.

↑

Page 8

1 Q Okay. Did you speak with anyone else
2 besides your attorneys in anticipation of this
3 deposition?

4 A No. Other than I spoke to the general
5 counsel for the speaker but of course he's an
6 attorney as well, I mean not general counsel
7 excuse me, the chief of staff for the speaker.

8 Q And what did you speak about generally?

9 A Again, just sort of general matters. You
10 know, I don't know that I you know can tell you
11 anything specifically other than you know we were
12 going to take a deposition and it was going to be
13 today, and that was about it.

14 Q And what was this individual's name?

15 A Neal Inman.

16 Q Sorry. Could you say that again?

17 A Neal Inman.

18 Q Neal Inman thank you, and you said general
19 matters. I mean could you just be a little bit
20 more specific? I mean were you talking about the
21 redistricting process? Were you talking about
22 what you anticipated I would ask today? Could you
23 just give me a little bit more detail?

24 A Yeah I mean we just talked about, you know
25 he, again what sort of to anticipate today. We

↑

Page 9

1 talked about you know the process in general. You
2 know I was just trying to think back through the
3 timeline that we, that we laid out and, and you
4 know that was, that was essentially it. Mostly in
5 talking to kneel it was about working with Sam
6 Hayes who's on the call who's a lawyer, general
7 counsel for the speaker, you know to work with Sam
8 to talk about the process that we had, and again,
9 just to jog my memory for purposes of getting

10 ready for today.

11 Q So you also spoke with Mr. Haste in
12 preparation for the deposition today?

13 A Yes, but I considered him to be one of our
14 lawyers.

15 Q Is he representing you in this matter?

16 A He's the general counsel for the speaker.

17 Q I mean just to answer ask the question
18 again, is Mr. Hayes representing you in this
19 matter that we're here on today?

20 MR. STRACH: Yeah objection. Mr. Haste is
21 would be considered legal counsel by us in this
22 matter just as much as I am legal counsel for
23 Representative Hall.

24 Q Has he been retained to represent the
25 witness in this litigation?

↑

Page 10

1 MR. STRACH: He's an employee of the
2 General Assembly.

3 Q So just to confirm, are you Representative
4 Hall going to refuse to answer any questions that
5 I ask about your communications with Mr. Hayes

6 general counsel for Speaker Moore?

7 MR. STRACH: Yes that is correct. I will
8 instruct him not to answer those questions.

9 MR. CALLAHAN: And is that on the basis of
10 attorney-client privilege.

11 MR. STRACH: It's on the basis of
12 attorney-client privilege and legislative
13 privilege.

14 Q To confirm whose legislative privilege is
15 being invoked to prevent the witness from
16 answering questions about communications with Mr.
17 Hayes?

18 MR. STRACH: At a minimum Representative
19 Hall's and other legislators that Mr. Hayes talked
20 to.

21 Q Representative Hall just to confirm you
22 are going to decline to answer questions about
23 communications with Mr. Haste on the basis of your
24 legislative privilege?

25 A And attorney-client privilege, yes.



1 Q For each question that you refuse to
2 answer it will be both?

3 MR. STRACH: It depends on your question.

4 Q Okay. Actually moving on that's a nice
5 segue to talk a little bit about legislative
6 privilege. You're appearing here today
7 Representative Hall in response to a deposition
8 notice that the plaintiffs served on you, on your
9 counsel I should say; is that correct?

10 A It is.

11 Q And you're one of six legislators named as
12 a defendant in this case?

13 A That sounds right.

14 Q And in appearing today you have chosen to
15 waive legislative privilege or legislative
16 immunity; is that correct?

17 A Yes.

18 MR. STRACH: And that and let me clarify
19 that's correct as to his appearance. Legislative
20 privilege would entitle him to not appear today
21 and so he's waived legislative privilege as to his
22 appearance.

23 MR. CALLAHAN: Right to clarify you just
24 mentioned a few moments ago that you intended to
25 invoke your legislative privilege as to specific

1 questions about certain communications but you
2 have waived legislative privilege to appear here
3 today. Is that a fair summary.

4 MR. STRACH: Correct.

5 Q Okay. Can you tell me a bit about why you
6 decided to waive legislative privilege to that
7 extent I just described?

8 MR. STRACH: Objection. That's not
9 appropriate question.

10 MR. CALLAHAN: On what basis?

11 MR. STRACH: Because he's, he does not
12 have to talk about his internal personal
13 deliberations about why he waived privilege.
14 That's not required or permissible, and so I'm
15 going to instruct him not to answer that question.

16 Q Representative Hall are you invoking
17 legislative privilege as to the question of why
18 you decided to waive legislative privilege?

19 MR. STRACH: Objection. I'm instructing
20 him not to answer that question. That's an
21 inappropriate question.

22 MR. CALLAHAN: Can you explain to me on
23 what basis you are instructing the witness not to
24 answer the question?

25 MR. STRACH: He does not have to explain

↑

Page 13

1 to you or to anyone else why he's invoking
2 privilege. That would not only be privileged
3 itself under legislative privilege but it would
4 also involve attorney-client privilege
5 discussions. He's not he's not required to
6 discuss that.

7 MR. CALLAHAN: I'm not asking the witness
8 about whether he had communications with attorneys
9 about whether to waive privilege. I'm asking the
10 witness why did you decide to waive legislative
11 privilege in this matter? Is there any objection
12 to that question beyond the fact that it's
13 inappropriate?

14 MR. STRACH: Yes. Legislative privilege
15 and attorney-client privilege, and so he won't be
16 answering that question.

17 Q Representative Hall you're aware that four
18 other legislative defendants in this case have not
19 waived legislative privilege, sentence I don't
20 remember Daniel Senator Newton Speaker Moore and
21 Senator Berger; is that right?

22 A I'm aware that Speaker Moore and Senator
23 Berger have not but I don't know about the areas.

24 Q Okay. Do you have any knowledge or
25 information about why senator Daniel has decided

↑

Page 14

1 not to waive legislative privilege?

2 MR. STRACH: Objection. Instruct the
3 witness not to anxious on the basis of legislative
4 privilege and attorney-client privilege.

5 Q Is this on the basis of legislative
6 privilege for the witness?

7 MR. STRACH: No it's on the basis of
8 legislative privilege for the other legislators
9 who've not waived privilege.

10 MR. CALLAHAN: Have those legislators
11 invoked legislative privilege as to my questions
12 about Representative Hall's knowledge.

13 MR. STRACH: Representative Hall does not
14 have the authority to waive the privilege as to
15 them, and he will not be doing that today.

16 MR. CALLAHAN: Okay.

17 Q Do you have any knowledge or information
18 about why Senator Newton has decided not to waive
19 legislative privilege?

20 MR. STRACH: Objection instruct the
21 witness not to answer same basis.

22 Q What about Senator Berger?

23 MR. STRACH: Objection. Instruct the
24 witness not to answer. Same basis.

25 Q Speaker Moore?

↑

Page 15

1 MR. STRACH: Objection the instruct the
2 witness not to answer. Same basis.

3 MR. CALLAHAN: Okay just to clarify, this
4 is the legislative privilege of those individuals
5 I have just listed that is preventing the witness
6 from answering these questions?

7 MR. STRACH: As well as the

8 attorney-client privilege.

9 MR. CALLAHAN: Okay.

10 Q Some of the defendants I named would you
11 agree they have firsthand knowledge about the map
12 drawing process?

13 MR. STRACH: Objection. If you know what
14 knowledge they have, you can, you know speak
15 generally to it but.

16 A I mean obviously the Senate chair would
17 have some knowledge of it. I mean. I don't know
18 what knowledge Senator Berger or Speaker Moore
19 would have. You'd have to ask them.

20 Q Just to pin down a few of these points
21 Senator Daniel and Senator Newton are co-chairs of
22 the Senate Redistricting Committee; correct?

23 A Yes.

24 Q And Senator Newton was the primary sponsor
25 of the Senate plan that ultimately was enacted?

↑

Page 16

1 A I don't know who the primary sponsor of
2 the Senate plan was.

3 Q Was he was he one of the sponsors?

4 A He probably was since he was the chair.

5 Q And Senators Newton and Daniel they were
6 sponsors of the enacted congressional plan; is
7 that correct?

8 A I don't remember whose name was listed as
9 the actual sponsors of the bill.

10 Q Well these individuals as co-chairs of the
11 Senate Redistricting Committee you think would
12 probably have some knowledge about the maps that
13 ultimately were enacted in, at the House and
14 congressional and Senate level is that fair?

15 A I'm sure they would have some knowledge of
16 it yes.

17 Q Okay. Did you have any communications,
18 oral, wherein, individual, group, anything, with
19 any of the four individuals I've just listed about
20 whether you or they should invoke legislative
21 privilege or waive legislative privilege?

22 MR. STRACH: Objection. Instruct the
23 witness not to answer legislative privilege,
24 attorney client privilege.

25 Q Representative Hall you served as a state

1 representative since 2017; is that right?

2 A Yes.

3 Q Do you recall that in 2019 a three judge
4 panel struck down the House and Senate plans that
5 reps had drawn in 2017 on the basis that they were
6 unconstitutional gerrymanders?

7 A Yes.

8 Q And I understand that you weren't on the
9 Redistricting Committee then but is it fair to say
10 you were familiar with the process in 2017?

11 MR. STRACH: Objection. Which, which
12 process?

13 Q The redistricting process that led to the
14 enactment of the 2017 plans that were then struck
15 down in 2019?

16 A I was on the committee as a committee
17 member in 2017. So I, whenever that, initial
18 redraw took place in 2017 or 2018 I was on the
19 committee.

20 Q You were on the House Redistricting
21 Committee in 2017?

22 A Yeah. I was on it my first term.

23 Q And you voted in favor of the 2017 House

24 plan; is that correct?

25 A I think so.

↑

Page 18

1 Q And the 2017 Senate plan?

2 A Yes, I think so.

3 Q Those 2017 plans were drawn in response to
4 a federal court ruling striking down the previous
5 district as unconstitutional racial gerrymanders;
6 correct?

7 A Yes.

8 Q Were you involved at all in the drawing of
9 the 2017 House plan?

10 A That point I was in my first term, and so
11 I would have had limited involvement with the
12 actual drawing of any of those maps. I've
13 obviously as a member of the committee had the
14 opportunity to review and debate and vote on them
15 but I don't recall having involvement in actually
16 drawing them.

17 Q Did you provide any input to those who had
18 more active involvement in drawing them?

19 A Other than legislators, you know I'm sure

20 I would have spoken to other legislators who were
21 on the committee and involved but I, I wouldn't
22 have spoken to anybody other than legislators, and
23 I don't recall any of those conversations. I mean
24 that was four years ago.

25 Q Did you speak with Representative Lewis



Page 19

1 during the map making process?

2 A Yeah, I was a first term leather he was
3 the rules chair. So I'm sure we didn't talk a
4 whole lot but I'm sure I spoke to him at some
5 point during that process but it wouldn't have
6 been very much.

7 Q Did you speak with any political
8 consultants about the 2017 maps?

9 A I, I don't remember ever doing that. I, I
10 seriously doubt at that point I would have been
11 speaking to anyone about those maps other than
12 legislators.

13 Q Did you have any communications with
14 Dr. Thomas Hofeller about the 2017 maps?

15 A No. I don't believe I ever met Mr.
16 Hofeller.

17 Q You're familiar with Mr. Hofeller however?

18 A Just as a general matter but I don't, I
19 don't believe I ever met him.

20 Q Just moving on for a moment. A
21 three-judge panel I'm going back to 2017-2016 a
22 three-judge panel granted an injunction blocking
23 use of the congressional map that Republicans drew
24 in 2017 on the grounds that it was an
25 unconstitutional. Do you recall that?

↑

Page 20

1 A 20.

2 MR. STRACH: Objection you've got to the
3 clarify that Sam. I don't know that's correct.

4 Q Well, I apologize. The 2016 congressional
5 plan, in 2019 a three judge panel granted an
6 injunction blocking its use on the ground that it
7 is an unconstitutional gerrymander. Does that
8 sound familiar?

9 A Yes.

10 Q I apologize I might have misstated the

11 date. The 2016 congressional plan was drawn
12 because the federal court struck down the previous
13 congressional plan that Republicans drew in 2011
14 as an unconstitutional gerrymander. Is that also
15 correct?

16 A Yes.

17 Q And I understand you weren't in the
18 General Assembly at this time but are you
19 generally familiar with or have some knowledge
20 about the 2016 redistricting process?

21 A Very little. I probably know next to
22 nothing about what their process was, what limited
23 knowledge I would have had would have been simply
24 through reading the newspaper, and I don't
25 remember specifically reading anything about that

↑

Page 21

1 process.

2 Q How about for the 2011 process? Do you
3 have any familiarity with that?

4 A No.

5 Q Would you agree with me that one of the

6 goals of the 2016 congressional plan was to
7 maximize partisan advantage?

8 MR. STRACH: Objection? Which plan the
9 2016 plan?

10 Q The 2016 congressional plan.

11 MR. STRACH: Objection. Answer if you
12 can.

13 A Again, I wasn't a part of the drawing of
14 the 2016 plan. So you know, I have no idea. I
15 wasn't privy to any conversations legislators may
16 have had.

17 Q Well one of the criteria adopted by the
18 joint select committee on redistricting in 2016
19 was quote partisan advantage. Are you aware of
20 that?

21 A Other than what you've just told me, no.

22 Q Do you have any reason to doubt that the
23 one R vote of 2016 criteria was partisan
24 advantage?

25 MR. STRACH: Objection. Answer if you

↑

1 can.

2 A That document speaks for itself, so I'm
3 sure it's out there somewhere. So if you say
4 that's what it said, then you know, the document's
5 there. We can go look at it.

6 Q And in fact one of the goals in the 2016
7 plan was to maintain ten Republican seats and
8 three Democratic ones; is that correct?

9 MR. STRACH: Objection. Answer it if you
10 can.

11 A I don't know. Again I wasn't part of that
12 process.

13 Q Okay. I'll just share my screen for one
14 moment I'm going to pull up what I've marked as
15 Exhibit 1. Can you see a PDF on the screen that
16 says 2016 continues congressional plan committee
17 adopted criteria?

18 A Yes.

19 Q And do you see the fourth underlined entry
20 partisan advantage is that what that says?

21 A Yeah. Can you zoom in a little bit?

22 Q Sure.

23 A Okay.

24 Q Have you ever seen these 2016 criteria
25 before that I'm showing you right now?



1 A Not that I recall.

2 Q Okay. Can you just read those two
3 sentences there for partisan advantage?

4 A Partisan makeup of the congressional
5 delegation under the enacted plan is 10
6 Republicans and three Democrats the committee
7 shall make reasonable efforts to construct
8 districts in the 2016 contingent congressional
9 plan to maintain the current partisan makeup of
10 North Carolina's congressional delegation.

11 Q Thank you representative call and just to
12 go back to a previous question would you agree
13 with me that one of the explicit goals of the 2016
14 redistricting process was to maintain ten
15 Republican seats and three Democratic ones?

16 MR. STRACH: Objection answer it if you
17 can.

18 A It looks like they were going to make
19 reasonable efforts to do that.

20 Q And in fact the 2016 criteria that I just
21 showed you, those freely allowed consideration of

22 partisan data; is that correct?

23 MR. STRACH: Objection. Go ahead.

24 A That appears so.

25 Q Okay. And is it also true in moving on to

↑

Page 24

1 2017 where I know you were on the committee, the
2 state House and Senate criteria used in 2017 also
3 allowed use of election data; is that correct?

4 A I think that's the case but again I was a
5 first term law maker and wouldn't have had a ton
6 of involvement in it other than just being on the
7 committee.

8 Q Well you voted for those criteria;
9 correct?

10 A I, yes, I would have likely been there for
11 the vote on the criteria but I mean again it was
12 four years ago. So but I think, my recollection
13 is partisanship was allowed to be used.

14 Q Well you voted, just to clarify, you voted
15 in favor of those criteria; correct?

16 A I believe so, yes.

17 Q And one of those criteria was that

18 political considerations and election results data
19 may be used in the drawings of legislative
20 districts in the 2017 House and Senate plans.

21 Does that sound familiar?

22 A It doesn't, but I, you know, that probably
23 was something similar to what the criteria of on
24 partisanship was at that point.

25 Q Okay just to pull it up for one second.

↑

Page 25

1 Do you see PDF that says 2017 House and Senate
2 plans criteria?

3 A Yeah.

4 Q Does this look familiar to you? Have you
5 ever seen this document before?

6 A Yeah. I'm, I think that's the criteria we
7 would have voted on in 2017 but again it's been,
8 you know four years since we really over four
9 years since we voted on it so I don't remember
10 specifically what the criteria at that point were,
11 but yeah that looks that looks right.

12 Q And there's this criteria here down near

13 the bottom that says election data and that's what
14 just a few moments ago I read to you?

15 A That's right yeah.

16 Q So is it fair to say that at the time you
17 believed these criteria to be appropriate criteria
18 for the use in drawing legislative districts?

19 A Yeah, that's right.

20 Q You considered it appropriate for
21 legislators to use political considerations and
22 election results data in drawing districts?

23 A Yes.

24 Q Do you still believe that's appropriate
25 today?

↑

Page 26

1 A Well, you know, in my opinion, you know
2 it's certainly legal to do it that way but we
3 voluntarily made the decision that we were not
4 going to use election results data or partisan
5 considerations in drawing these maps.

6 Q Just to restate my question, do you still
7 believe it's appropriate as you did in 2017 to use
8 election data and political considerations in

9 drawing district lines?

10 MR. STRACH: Objection. Asked and
11 answered.

12 MR. CALLAHAN: I asked the witness whether
13 he believed it was appropriate to do so.

14 Q Do you believe it's appropriate to use
15 partisan considerations to draw district lines?

16 MR. STRACH: And he answered your question
17 and you can answer it again if you like.

18 A I mean, again, I think the law allows it,
19 but you know we made the decision in this process
20 to not use that election data or any partisan
21 considerations, and as a general matter I think
22 that that's a better way to do it without using
23 any election results data or partisanship.

24 Q All right. Representative Hall you're now
25 the chairman of the House standing committee on

↑

Page 27

1 redistricting; is that correct?

2 A Yes.

3 Q Does that mean tough leading role on the

4 House side for the 2021 redistricting process for
5 all three plans House Senate and congressional?

6 A I think that's fair statement.

7 Q And you personally crew the house plan
8 enacted in November; correct?

9 A I drew almost all of the state House plan
10 enacted, yes.

11 Q And is it correct that you personally
12 sponsored take a look legislation that enacted
13 that plan House Bill 976?

14 A Yes.

15 Q Is it also correct that you sponsored for
16 consideration in the House the congressional plan
17 that was ultimately enacted as Senate bill 740?

18 A Yes.

19 Q And so in other words you didn't
20 specifically draw the enacted congressional plan
21 but you evaluated it you were one of its
22 proponents in the House is that fair?

23 A Yes.

24 Q And at the November 4th House floor vote
25 is it correct that you called it quote the best



1 member submitted map that you saw?

2 A What, when you say it, what are you
3 talking about? Which map?

4 Q The congressional plan ultimately enacted
5 as Senate bill 740?

6 A I think I probably said that, yes.

7 Q And sit right that the enacted
8 congressional map was sponsored by Senators
9 Daniel, Newton and Berger?

10 A I don't know who the sponsors on the bill
11 were.

12 Q Was it your understanding that they were
13 responsible for drawing that map?

14 A Um.

15 MR. STRACH: Objection. Did you say
16 Berger or did you mean to say Hise?

17 Q I said Berger but I might have meant to
18 say Hise. I apologize?

19 MR. STRACH: Go ahead and answer.

20 A My understanding was the Senate chairs
21 were responsible for drawing most of the
22 congressional map.

23 Q Did you consult with any of those Senators
24 or their staffs at all as they drew that

25 congressional map?



Page 29

1 A Yes.

2 Q When did you do so?

3 A At some point before it was passed.

4 Q Did do you so multiple times?

5 A Yes.

6 Q Who specifically did you talk to?

7 A I would have talked to Senator Hise

8 Senator Daniel and Senator Newton.

9 Q Did you speak with each of them

10 individually?

11 A I don't think so. I think that we just

12 sort of met at a group.

13 Q So you did, just to clarify you spoke with

14 Senator Daniel, Senator Newton and Senator Berger

15 all together?

16 A You said Senator Berger.

17 Q I said Senator Berger. I meant Hise,

18 Senator Hise. My apologies.

19 A At some point in the process, yes.

20 Q You did not speak with, well let me start
21 with Senator Daniel did you speak with Senator
22 Daniel at all individually about the congressional
23 plan?

24 A He's my Senator, and so I see him a lot
25 I'm sure you know we've had general conversations,

↑

Page 30

1 but I don't, you know, I don't, I don't recall us
2 sitting around talking about you know what a
3 specific map would look like, nor do I recall any
4 specifically conversations with individual of the
5 other chairs that you mentioned.

6 Q Okay. When did you meet with them to
7 discuss the congressional plan all together? You
8 mentioned a group conversation.

9 A It would have been some point before the
10 map was passed. It would have been after map
11 drawing was opened up and before these maps were
12 passed.

13 Q What did you discuss specifically?

14 MR. STRACH: Objection. Sam, we'll allow
15 Representative Hall to discuss what he said, what

16 he told them, but he will not be discussing
17 anything that they said back to him because that
18 would waive their legislative privilege so with
19 that caveat answer the question.

20 A The, so I had seen the map that, that they
21 had drawn in the Senate committee, and I had drawn
22 a congressional map as well in the House
23 committee, and I felt that, that their map was
24 better than the map that I had drawn. Their maps
25 swept fewer counties their map you know only split

↑

Page 31

1 two municipalities across the entire state one of
2 which is Charlotte that has to be split. So they
3 drew a congressional map that effectively only
4 split one municipality which I thought was, was
5 quite a feat to be able to do. One of the changes
6 that I suggested that, that they make on that map
7 and that, that I could get behind a map if they
8 did make a change was to the finger counties in
9 northeastern North Carolina. We had heard a great
10 deal of public comment from folks in that area who

11 wanted those counties to be kept together. It
12 seemed to be something that we could pretty easily
13 do without having to make a ton of changes in the
14 map, and you know, I knew that those, those
15 counties have a lot of, of common interest with
16 one another, and so the, well anyway that's what I
17 said to the Senate chairs without going into you
18 know what they said to me in response.

19 Q Okay. To clarify, what you just relayed
20 was what you said to the Senate chairs. You are
21 refusing to disclose what they said to you on the
22 basis of legislative privilege; is that correct?

23 MR. STRACH: Correct. That's correct.

24 Q So just going back for a moment. When you
25 said that their map was better, did you conduct

↑

Page 32

1 any analysis of that map yourself to determine
2 that it was better?

3 A Other than what I just described, no.

4 Q Well, did you speak with your staff about
5 the Senate, or the Senate drawn congressional map?

6 A I'm sure I probably did.

7 Q Do you recall the content of those
8 conversations?

9 A They would have been as a general matter
10 what I just told you. I thought the Senate map
11 was better than mine. It split very few counties
12 and very few cities.

13 Q Did you learn of any analysis done by
14 others of that Senate drawn congressional plan?

15 A You mean ever? Have I ever learned of any
16 analysis?

17 Q Well, at the time that the Senate drawn
18 congressional plan was being discussed and voted
19 on, did you become aware of any analysis done by
20 others of that congressional plan?

21 A I guess I would need to know, you know, a
22 more specific timeline, but obviously these maps
23 have been analyzed by a hundred different groups
24 since we've passed them, but at that point when I
25 was discussing it with the Senate chairs, at that

↑

1 point I don't believe I had seen any sort of

2 analysis.

3 Q So the only analysis that you had done of
4 this plan was your own and potentially your
5 staff's; is that correct?

6 A Yes.

7 Q Stepping back for one second. In early
8 August you and the Senate chairs proposed criteria
9 to govern the 2021 process; is that correct?

10 A Yes.

11 Q Before announcing those criteria did you
12 seek any input from Democratic members from either
13 committee either the House or Senate committee
14 about what the criteria should be?

15 A Well, we had several, we had the committee
16 meeting where Democrats were allowed to put forth
17 amendments and they were notified ahead of time
18 that they were going to have a chance to put forth
19 amendments, and as I recall they came up with
20 several amendments that, that they didn't, they
21 didn't submit until the very last minute. In fact
22 the morning of the committee meeting, so and it
23 was tough to really have a conversation when the
24 committee's already started. I mean obviously we
25 debated those proposed amendments, but no, no



1 Democrats that I recall ever asked me to have
2 input on the criteria until the morning of the
3 committee.

4 Q Do you recall when your proposed criteria
5 or a draft of those proposed criteria was first
6 sent around to the committee members?

7 A I don't recall the specific date, no.
8 Sometime in August.

9 Q So within the same month as their
10 enactment; is that correct?

11 A Yes, yeah. We of course, as I recall, the
12 census data was going to be released on the day
13 that we actually passed the criteria and you know
14 foreseeing that we would probably be spending some
15 time with you fine folks we decided, when I say
16 we, I mean the chairs, decided that we should go
17 ahead and pass the criteria before that census
18 data came out. That way no one would argue that
19 somehow we looked at the census data and reverse
20 engineered criteria to somehow benefit us.

21 Q Well, when you say we, did you write the
22 2021 proposed criteria that ultimately were

23 enacted on August 12th?

24 A I didn't sit down and actually type out
25 the words, but I, I spoke to the Senate chairs

↑

Page 35

1 about what criteria should look like.

2 Q Are you responsible for all of the
3 criteria that ultimately were enacted?

4 A I don't know what you mean by responsible
5 for.

6 Q Did you come up with them?

7 MR. STRACH: Objection. Answer that if
8 you can.

9 A I didn't come up with all of the criteria.
10 Most of these criteria I guess in fact all of them
11 are, are just traditional redistricting criteria
12 other than the criteria to not use a partisan or
13 election data which of course we, we got from the
14 court in the 2019 Common Cause case, so I didn't
15 come up quote unquote come up with any of the
16 criteria.

17 Q Well, who wrote that specific criteria I

18 don't know about not using election data?

19 A I think it was Paul Ridgway.

20 Q Am I understanding correctly that you copy
21 pasted from the Common Cause opinion directly into
22 the criteria that were enacted on August 12th?

23 A I didn't, I didn't actually draft the
24 document, but staff would have drafted the
25 document, but that language I, I think is a

↑

Page 36

1 literal quote from that 2019 Common Cause case.

2 Q So you didn't have any input into the
3 language of the criterion governing the
4 consideration of partisan considerations or
5 election data? Is that your testimony?

6 MR. STRACH: Objection. Answer if you
7 can.

8 A Yeah, I, sure, I mean I had input on
9 whether we should use, whether that particular
10 criteria should be adopted as criteria or not, and
11 we ultimately adopted the criteria.

12 Q Is it your understanding that other than
13 not using partisan advantage or election data the

14 2021 criteria are the same as previous ones?

15 MR. STRACH: Objection.

16 Q As the criteria used in redistricting?

17 MR. STRACH: Objection. What criteria,
18 which ones are you talking about? All of them?

19 Q Is it your understanding that they're
20 different than the 2017 House and Senate criteria?

21 MR. STRACH: Objection. Answer it if you
22 can.

23 A I don't know that they were different or
24 not. I mean obviously the election data and
25 partisan consideration was different. The local

↑

Page 37

1 knowledge piece I think was different. I don't
2 know if they'd been used in the past or not, but I
3 think most of the criteria had, had been used in
4 the past.

5 Q Are you aware of any other differences
6 besides what you just mentioned?

7 MR. STRACH: Objection. I mean Sam with
8 all due respect he can't sit here and give you a

9 red line without seeing the documents in front of
10 him, and so I think this kind of question's
11 inappropriate but, but that's my objection.
12 Answer it to the extent that you can.

13 A You know I'm sure there are some
14 differences. You know, if I sat down and looked
15 at each document I'm sure there are differences
16 here and there. You know, I know obviously we
17 chose not to use racial data just as we had done
18 in 2019, but I know in the past and as a general
19 matter I know in the past in North Carolina they
20 did use racial data. I guess that's another
21 difference that this would have had, this criteria
22 would have had compared to, you know, the entire
23 history of redistricting in North Carolina. You
24 know, there, you know redistricting's been going
25 on here for a long time so I'm sure every year

↑

Page 38

1 it's been slightly different so I don't know how
2 to answer it other than to say I think as a
3 general matter this criteria's been long used.
4 The exceptional thing we did was, was voluntarily

5 decide not to use election data.

6 Q Well one thing is that the 2021 criteria,
7 those didn't restrict the number of times that a
8 given county could be split; is that correct?

9 A Well, I at this point they did. I think
10 they, you know in the language about Steve
11 convenient son, I think the effect of that was to
12 restrict that.

13 Q Well, did the criteria say you can't split
14 a county, for example, more than one time?

15 MR. STRACH: Objection. What, as to which
16 plan?

17 Q Did the, did the enacted criteria in 2021
18 prevent legislators or map drawers from split ago
19 county more than one time?

20 MR. STRACH: Objection. Asked and
21 answered. Answer it again.

22 A I mean again, I think it, the criteria
23 lays out the Steve convenient son case, and you
24 know, it's obviously clearly in there so.

25 Q Okay. I'm going to pull up Exhibit 1

↑

1 which you'll recall is the 2016 criteria I'm here
2 under the heading compactness. I'm just going to
3 read the last two sentences of that to just
4 confirm this is correct. It says division of
5 counties shall only be made for reasons of
6 equalizing population, consideration of incumbency
7 and political impact reasonable efforts shall be
8 made not to divide a county into more than two
9 districts; is that correct?

10 A Yes.

11 Q Okay. Is that specific portion I just
12 read in the 2021 criteria that you proposed and
13 enacted?

14 A I don't believe that specifically language
15 was in there for the congressional plan, no.

16 Q Well, is it in the there for any of the
17 plans?

18 A No but I thought you were asking me about
19 the criteria for the congressional plan, yeah.

20 Q Sure, sure. Why did you decide not to
21 include language like that in the 2021 criteria?

22 A You know, it -- I would have to have the
23 criteria in front of me. If I could look at our
24 specifically the congressional.

25 Q Sure?

↑

Page 40

1 A Criteria we had this time to go back and
2 see what we did have.

3 Q Sure I'll pull those up. Those are
4 Exhibit 5. We see there the joint criteria August
5 12th criteria?

6 A Yeah, mm-hmm.

7 Q And just zooming in here counties
8 groupings and traversals do you see any language
9 like I read from the 2016 criteria here?

10 A Yeah so on the second paragraph on
11 counties groupings and traversals where it says
12 that divisions of the counties in the 2021
13 congressional plan shall only be made for reasons
14 of equalizing population and considerations of the
15 double bucking if a county is of sufficient
16 population size to contain an entire congressional
17 district within the county's boundaries the
18 committee shall construct a district entirely
19 within that county and so that I think that
20 language would have a similar effect of limiting

21 county traversals.

22 Q Is your position that that language
23 restricts the ability to divide a county more than
24 once like the 2016 criteria which I've just pulled
25 up again where it says reasonable efforts shall

↑

Page 41

1 shall made not to divide a county into more than
2 two districts your position is that the 2021
3 criteria had that same restriction?

4 A No. It doesn't have that restriction.

5 Q Okay. So that last sentence here in the
6 2016 try tear I don't know does that mean that you
7 can split Wake County for example into two
8 districts but you shouldn't split it into three
9 districts?

10 A You're asking me to apply the 2016
11 criteria?

12 Q Correct. Correct.

13 A Well, you know, first I'll say, again, I
14 had no involvement -- are you showing necessity
15 2016 criteria right now on the screen?

16 Q Yes I apologize. I apologize
17 representative this is 2016 criteria I'm asking
18 you whether the final sentence, if you were
19 drawing a map using these criteria, am I correct
20 that you can split Wake County into two districts
21 but you should not split it into three districts?

22 MR. STRACH: Objection. Answer it if you
23 can.

24 A I mean it says reasonable efforts shall be
25 made, and the other, the other part of this is,

↑

Page 42

1 you know, I wasn't there obviously in 2016. So I
2 don't know what the thinking was behind this
3 particular language, but my understanding is this
4 would have been adopted basically in a remedial
5 setting for the redrawing of these maps, and so
6 I'm sure there was a court order out there
7 somewhere that probably informed those legislators
8 at the time on what criteria they should adopt.
9 So you know again, I, it's difficult for me to
10 compare the old criteria that I had no involvement
11 with to the criteria that we voluntarily adopted

12 five years later.

13 Q You'd agree with me that all else equal a
14 map that under these 2016 criteria split a county,
15 for example, Wake County into three separate
16 districts would be less preferable on these
17 criteria than a map that split it into two
18 districts?

19 MR. STRACH: Objection. Answer it if you
20 can.

21 A I guess in some literal sense, you know,
22 if you, but here, the problem is this. I mean on
23 criteria and I'm sure, you know, if I read that
24 entire document there were other criteria there,
25 and so you can't just look at one criteria and

↑

Page 43

1 say, well if a map violates that particular
2 criteria, then the map is per se going to be worse
3 than a map that doesn't violate that particular
4 criteria, but again you said all else being equal
5 I think so if all else is being equal then you're
6 probably right.

7 Q Okay. And just to confirm so this
8 language was in the 2016 criteria and it was not
9 in the 2021 criteria. Do you have any knowledge
10 about why it was included in 2016 and not in 2021?

11 MR. STRACH: Objection. Answer if you
12 can.

13 A I don't know why it was in the 2016, of
14 course, and you know in terms of the 2021 I don't
15 recall reading through this to, to compare it.
16 Again, I wasn't involved in the 2016 draw.

17 Q So you've never seen this compactness
18 sentence that I'm showing you right now?

19 A I don't think so.

20 Q Okay. There are a couple other
21 differences. So the criterion on compactness was
22 also different in 2021 versus in 2017; is that
23 correct?

24 A I'm not sure.

25 Q Okay. I'm going to pull up Exhibit 3. So



1 looking at compactness here do you see that in the
2 center of the screen says the committees shall

3 make reasonable efforts to draw legislative
4 districts in the 2017 House and Senate plans that
5 improve the compactness of the current districts.
6 Is that what that says there?

7 A Yeah.

8 Q Okay. Did the 2021 enacted criteria
9 instruct map drawers to improve the compactness of
10 current districts?

11 A I would have to see the language again. I
12 know compactness was a criteria.

13 Q Sure. I'll pull it up. This is Exhibit
14 5, and zooming in here on compactness?

15 A Yeah. So.

16 Q Go ahead please?

17 A The difference is the 2017 or 2021 rather
18 criteria said to improve, and this is just saying
19 make reasonable efforts to draw the districts in a
20 compact way, and I think most of that difference
21 is explained by the fact that in 2019 we were
22 again in a remedial setting where we were
23 redrawing current districts. In the 2021 draw we
24 were starting with a blank slate. We weren't
25 redrawing anything. So there was really nothing,

1 nothing to improve.

2 Q To clarify you said 2019 but you meant
3 2017, the criteria I showed you which?

4 A That's right 2019, yeah.

5 Q Okay. So the 2021 criteria in your view
6 had no reason to try to improve the compactness of
7 districts?

8 A Well, in 2021 we were drawing completely
9 new districts, and so that's different than the
10 other criteria that you're showing me because in
11 those cases we're redrawing parts of a current map
12 and so you're improving on something that's
13 already there. So, and I guess sort of the
14 literal sense there was nothing to improve upon in
15 2021 in terms of, we weren't working off of an old
16 map sort of in every instance but you know, as a
17 general matter we still wanted to keep districts
18 as compact as we reasonably could taking into
19 consideration all the other criterion.

20 Q So the criteria I've been showing you from
21 2021, did Democrats in your committee offer their
22 own proposals on potential criteria or other sort

23 of procedural requirements you could use during
24 the process?

25 A Yes. So we had a committee meeting where

↑

Page 46

1 members were allowed to submit whatever amendment
2 they wanted to. As I recall we passed one
3 Republican amendment and one Democratic amendment,
4 but as I said earlier, instead of getting
5 amendments drafted and coming to me and other, the
6 Senate chairs ahead of time to try to actually
7 talk through what amendments would look like, we
8 didn't receive any amendments until the morning of
9 the committee meeting. If I recall the committee
10 started at 8:30 or 9. I'm not sure that we even
11 had any amendments at the time the committee
12 started, but I remember we were significantly
13 delayed throughout much of the day as those
14 amendment was drafted. So it was, it was
15 difficult at that point again under the time
16 crunch of wanting to get criteria adopted with
17 before the census data came out it was difficult
18 really to sit down and have a reasoned discussion

19 with them about potential changes.

20 Q Well one of the proposed changes came from
21 representative Pricey Harrison; is that correct?

22 A She I recall her putting forth one or more
23 amendments in that committee but I don't remember
24 which ones.

25 Q I'm going to show you something marked as

↑

Page 47

1 Exhibit 18 does this look familiar?

2 A Can you zoom in a little bit?

3 Q Sure.

4 A And can you just scroll down. Let me see
5 the other page. Yeah I think that was, I think
6 that was one of her proposed amendments.

7 Q And Representative Harrison sent copies of
8 this to you and other committee members before the
9 joint meeting on August 18th; is that correct?

10 A If she did, I don't recall that. I don't
11 remember her, certainly don't remember her calling
12 me or speaking to me about it ahead of time. So I
13 can't say that she didn't send it to you know my

14 e-mail, but you know, as the rules chair in the
15 House and the House redistricting chair especially
16 as rules chair I get a lot of e-mails. So it's
17 really difficult for me to monitor it all.

18 Q But you just said you've seen this
19 document; correct? It's familiar to you?

20 A I think I would have -- well again, I
21 think. So I'm not saying definitively. I'm
22 saying in the context of you telling me that that
23 was probably an amendment put forth I think it was
24 and I would have seen it in the committee room
25 this morning, but again I think there were like 12

↑

Page 48

1 or 13 amendments that I was given you know just
2 mere minutes to review and, and to decide upon.

3 Q And Representative Harrison asked for a
4 vote on this proposal during your August 18th
5 meeting; is that correct?

6 A She would have because we voted on every
7 amendment that a member put forth we took a vote
8 on.

9 Q But you didn't hold a vote on this

10 proposal during the meeting or afterwards, did
11 you?

12 A If she put it forth as an amendment we
13 voted on it. Now some members did have, have, I
14 remember Democratic members some had amendments
15 drafted that they ultimately with drew for reasons
16 unknown, but if Representative Harrison put this
17 forth as an amendment, I would have ensured as
18 chair of the committee that it got a vote as I did
19 for every other amendment put forth by Democrat or
20 Republican.

21 Q Either way these proposed amendments did
22 not pass. Am I correct?

23 A No.

24 Q And one of them you can see the top of
25 your screen for example was to disclose third

↑

1 parties involved in redistricting the committee
2 should immediately disclose all consultants and
3 counsel to members and committees of either House
4 of the General Assembly it goes on a bit? That's

5 one of these proposed criterion?

6 A Yes.

7 Q Can you explain why you decide not to
8 adopt that C specifically?

9 A No again I don't even, I don't recall this
10 amendment specifically. I had 12 or 13 amendments
11 that morning so I, you know, I don't know. Off
12 the top of my head I can't tell you why exactly we
13 voted this entire amendment down.

14 Q Well looking back now just looking at that
15 disclosing third parties, do you think this that
16 would have been a good idea, you know, in
17 retrospect?

18 MR. STRACH: Objection. Answer that if
19 you can.

20 A I don't think it would have made any
21 difference.

22 Q If the goal of a redistricting process is
23 transparency do you think it improves transparency
24 to disclose third parties involved in
25 redistricting?

↑

1 MR. STRACH: Objection.

2 A I guess, you know, to some degree that is
3 in the literal sense of the word would be
4 transparent.

5 Q And one of the other criteria just looking
6 here disclose initial draft maps, and it says
7 after receiving and incorporating public comment
8 draft maps should be released online for
9 additional public comment?

10 A Yes.

11 Q Would you agree that that criterion would
12 have improved the transparency of the
13 redistricting process in 2021?

14 MR. STRACH: Objection.

15 A You know, I don't think it would have
16 because, because and I'm informed by what actually
17 happened, and what actually happened was I drew a
18 map state House map and the Senate chair through a
19 Senate map and we sort of collectively they drew
20 the congressional map and I suggested the change
21 that I you know already told you about today, and
22 the Democrats didn't put forth any maps for public
23 comment. So they had plenty of time to do that.
24 I spent a great deal of time in that committee
25 room by myself just drawing the state House map,



1 so I don't think it would have made any difference
2 because they didn't, the Democrats didn't put
3 forth any attentive maps for the public to view.

4 Q Well, do you remember that generally in
5 drawing district lines or other legislation that
6 offering an opportunity for public comment
7 generally increases transparency?

8 A Sure. That's why we did it.

9 Q Moving to a slightly different topic. You
10 understand that under the North Carolina
11 constitution the house and Senate maps need to be
12 broken into county clusters or groupings in which
13 individual districts are drawn; is that correct?

14 A Yeah, I understand it as that as a
15 general matter the Stevenson case that is what's
16 required.

17 Q Am I right that in this 2021 process the
18 committees did not actually debate or vote on
19 which county clusters to use?

20 A Well, we did vote on which groupings to

21 use in the sense that the, the proposed, all
22 proposed amendments must have selected some
23 grouping. Now sometimes the grouping of course is
24 you know there's no real choice because the
25 population just is what it is, but obviously in



Page 52

1 the final map choices were made and we voted on
2 those, so yes we voted on the groupings.

3 Q Okay. You're saying that in an individual
4 map there was a choice made about county
5 groupings, but you as a committee did not debate
6 and vote before maps were drawn about the
7 groupings to use; is that correct?

8 A Yeah, that's right. You know, I thought
9 as chair the committee that really the best way to
10 handle it would be just to let members draw using
11 whatever groupings they, they wanted to. You
12 know, I, I didn't know if the Democrats might
13 choose other groupings. There may be other
14 Republican members who chose a grouping different
15 from what I chose, and so instead of limit that
16 upfront we just allowed that to be one of the

17 options in drawing the map for members.

18 Q Would you agree with me that the choice of
19 which counties to group together could have
20 significant partisan implications for a given map?

21 MR. STRACH: Objection. Go ahead.

22 A I guess that's possible you know depending
23 on, on what the, what which grouping was chosen
24 but again we didn't use any election data nor
25 partisan considerations in choosing in drawing or

↑

Page 53

1 choosing groupings.

2 Q All right. Just going back for a moment
3 to the 2021 criteria that we've been discussing.
4 So one of those criteria you'll recall states
5 partisan considerations and election results data
6 you shall not be used in the drawing of districts.
7 Does that sound right?

8 A It sounds right, yes.

9 Q Okay. So I understand that based on that
10 criterion, the method of software on those
11 official terminals, they didn't allow uploading

12 election data. That's right?

13 A That's right.

14 Q Okay. So you couldn't measure the
15 partisanship of the districts you were drawing
16 while sitting there at the official terminal as
17 the process was going. Is that fair?

18 A That's right.

19 Q But under your interpretation of the
20 criteria a member could freely draw maps outside
21 the official room that were drawn using elections
22 data?

23 A Well, are you asking me could they
24 literally and physically do that?

25 Q I'm saying that if a member drew a map

↑

Page 54

1 outside the official map drawing room using
2 elections data and then brought it into the room
3 and just copied the district lines, in your view
4 would that violate the criteria that I just read
5 to you from the 2021 enacted criteria?

6 A I think so, but again that's not what
7 happened here on the map that I proposed anyway.

8 I can't tell you in terms of others, but obviously
9 the map that I put forth that didn't happen.

10 Q And when you say the map that you put
11 forth, are you talking about the House map?

12 A The state House map, yes.

13 Q The state House map?

14 A Yeah.

15 Q Okay. Well, going back to the question of
16 what would violate the criteria. What about maps
17 drawn by another person? Could a member take a
18 map that he or she knew was drawn by someone else
19 using election data?

20 MR. STRACH: Objection.

21 Q Use that as the basis for drawing a map in
22 the public terminal room?

23 MR. STRACH: Objection.

24 A I think the criteria says no election
25 results data will be used and so if a member

↑

1 explicitly knew that somebody was simply drawing a
2 map using election results data and went and tried

3 to go and copy that as a carbon copy then yes that
4 would probably at least in the spirit of that
5 criteria would violate it.

6 Q Okay when you say a carbon copy. What if
7 it was used as a template but maybe some small
8 change was made would that still violate the
9 spirit of the criteria?

10 A Yeah, I mean I, you know at that point
11 they wouldn't really be using an outside map but
12 I, and again that didn't happen in this case
13 either on any maps that I worked on. So.

14 Q Well as the redistricting House chair, if
15 you learned that someone had taken a map drawn by
16 an outside person using partisan data and came in
17 and used it as the template for drawing a map in
18 the public terminal room and made a few minor
19 changes, in your view would that violate the 2021
20 enacted criteria that you adopted?

21 MR. STRACH: Objection. Asked and
22 answered. Go ahead.

23 A Yeah, I, it probably would, but you know
24 as the chair of the committee, you know, if I knew
25 that, we, you know, there's a good chance we

1 wouldn't have taken the map up as a, as a
2 committee, and that would have been of course a
3 reason for folks to vote against it we did take
4 it up.

5 Q Well, beyond that consequence of maybe not
6 voting for it what other sequences would you have
7 imposed if you had learned that?

8 MR. STRACH: Objection. Asked and
9 answered.

10 A Everybody there is elected. I don't have
11 the you know ability to impose the quote up quote
12 consequences on them.

13 Q Well are you saying your committee could
14 properly take on much those maps that I just
15 described that was drawn, you know, essentially
16 election data by proxy and?

17 A Again, it didn't happen in the House
18 committee.

19 Q If it did, would it be proper for the
20 House committee to pass that map?

21 MR. STRACH: Objection. Again answer if
22 you can and Representative Hall make sure that Sam
23 gets his full question out before you.

24 A Oh sorry. Sorry about that Sam. No again
25 we did not want to use any maps drawn using, using

↑

Page 57

1 election results data, and so in my opinion we
2 would -- a map that was drawn using election
3 results data would not be a map that complied with
4 our criteria.

5 Q But it would be up to the committee just
6 voting for the map to decide whether the pass the
7 map. There were no additional restrictions on the
8 ability of people to do that procedure that I just
9 described?

10 MR. STRACH: Objection.

11 A You know, other than, you know, as the
12 chair of the committee, you know, I have some
13 discretion about what bill goes before the
14 committee, but, you know, it's a, it's a
15 deliberative body and so if members want to put
16 things forth, they generally can but I can tell
17 you as the chair of the committee if I had
18 knowledge a map was drawn using election results

19 data, then I just wouldn't have put it before the
20 committee.

21 Q Okay. So every map you put before the
22 committee you did not have any knowledge that
23 there was any partisan data that went into it even
24 outside of the map drawing room. Is that how I'm
25 understanding what you just said?

↑

Page 58

1 A That's right.

2 Q Sort of a related question. Based on your
3 understanding of the 2021 criteria could a member
4 look at voting data outside the map drawing room
5 and just write down or memorize which VTDs to
6 include in a particular district to maximize
7 partisan advantage?

8 A No. I think that would be using election
9 results data.

10 Q And what about if a member used their
11 prior knowledge about the voting history of an
12 area when drawing district lines?

13 A Well, you know, obviously you can't remove
14 what what's in your head you know in drawing a

15 given map, and so you know, again our criteria was
16 not to use election results data or partisan
17 considerations, but obviously folks who were in
18 there drawing those maps are human, they might
19 know in general what the effect of a, of a given
20 draw would be.

21 Q So if someone had very detailed knowledge
22 of how various municipalities or VTDs or things
23 like that voted and then drew district lines with
24 the goal of maximizing partisan advantage, that
25 would comply with the 2021 criteria?

↑

Page 59

1 A No, I don't think it would because if
2 you're putting partisanship ahead of the other
3 criteria and your question was if that was your
4 goal to maximize it, you're not going to comply
5 with the other criteria.

6 Q Well, assuming you complied with the other
7 criteria and you had the goal of maximizing
8 partisan advantage as you drew lines, would that
9 map comply with the 2021 criteria?

10 A I think if you had a, if your goal was
11 just pure partisan maximization you're not going
12 to comply with the other criteria. Just in the
13 sense that you know if you're putting that ahead
14 of everything else you're not complying with the
15 criteria. So that map would not be a, a map that
16 complied with the criteria that was adopted.

17 Q I'll just ask one more time assuming that
18 you did comply with the other criteria and your
19 goal in drawing district lines was to improve your
20 party's political position in the map, your view
21 is that that would comply with the 2021 criteria;
22 correct?

23 MR. STRACH: Objection asked and answered.

24 A No.

25 MR. STRACH: Answer it again.

↑

Page 60

1 A No. Yeah, no I don't think that would
2 comply with the, in the way it was asked, no, I
3 don't think that would comply with the 2021
4 criteria.

5 Q Okay. Thank you. And in fact some

6 members of your committee raised concerns during
7 your committee hearings that members could do some
8 of the things like we've been discussing using
9 election data. You recall that; correct?

10 A Yes.

11 Q Okay. For example at the October 5th
12 hearing Representative Harrison asked whether
13 there was a way to prevent having election or
14 racial data with you even if not actually loaded
15 into the software. Does that sound familiar?

16 A It does.

17 Q And do you recall responding that members
18 were, quote, free to handle those issues as they
19 see fit?

20 A I don't remember my exact, my exact quote,
21 but I remember my, my general answer was, you
22 know, the folks in this, in the body of the
23 legislature, they're all elected and, you know, I
24 don't have the ability to go and, you know,
25 monitor them 24/7. You know, we adopted criteria.

↑

1 Only maps that were drawn in the committee room
2 would be adopted and, you know, I thought that
3 unto itself is unprecedented, and doing that in a
4 voluntary way. So I was comfortable with the
5 setup that we had.

6 Q And in fact you explained that you really
7 had no interest in checking what materials people
8 were using when drawing maps. Is that fair?

9 MR. STRACH: Objection.

10 A I, if I recall, I think I didn't have any
11 interest in, in checking in members' bags and not
12 that I remember briefcases and in their pockets,
13 you know. It wasn't simply that I, you know, I
14 don't care you know what you do outside of the
15 room as long as you don't do it in here. That
16 wasn't the point of whatever it was I said at the
17 time.

18 Q So your concern was purely practical. If
19 you had had a way to check what people were
20 bringing in, you would have done so?

21 A Well, my concern was purely practical, and
22 I don't believe there was a practical way for me
23 to go and check folks, quote-unquote, check
24 members as they walked in the room. You know
25 again these folks are all elected by the voters

1 just like I am, and you know, it's not, it's
2 really, I don't believe that in my power to make
3 them consent to a frisk search every time they
4 walk into a committee room.

5 Q When Representative Harrison wasn't the
6 only one to express these concerns.
7 Representative Reives said during the October 5th
8 hearing whether, he asked whether you could at
9 least prevent people from bringing in a physical
10 map to draw from. Does that sound familiar?

11 A I think he did, but again, you know, the
12 same problem. I'm not going to, what am I going
13 to do? Physically remove, grab it out of their
14 hands and take it from them? These folks are
15 elected. They deserve, you know, a certain faith
16 in them to -- they've been elected by the voters
17 of their district to go up there and do things the
18 way they see fit, and so I wasn't going to, you
19 know, shuffle through their pockets and
20 pocketbooks and briefcases every time they walked
21 in the room.

22 Q Well, in response to these concerns you
23 could have just told the members of your committee
24 don't bring in predrawn maps and use them at the
25 public terminals. Could you not have done that?

↑

Page 63

1 A I didn't do that, and you know one of the
2 reasons why is at the time, this was before
3 drawing really took place, I envisioned a process
4 similar to what we had in 2019, and in 2019 in
5 almost all cases on that redraw Democrats and
6 Republicans sat at terminals together drawing the
7 maps. In fact I think the Mecklenburg County draw
8 in 2019 was basically a tie early drawn by
9 Democrats. So I envisioned that being the case.
10 I didn't really see it as a problem because my, my
11 hope was that Democrats would be in there the
12 whole time, and you know they certainly could
13 have. I mean any Democratic member or frankly
14 their staffers for that matter could have come in
15 at any time and sat down with me and any or any
16 other member who was in there drawing and that was

17 really the vision that we had before the committee
18 at the time, and so I don't think it was a real
19 issue because you know members had the opportunity
20 to come in and watch other members, sit behind
21 them or work with them if they want to. I mean I
22 would have been glad to have had any Democratic
23 member who came and sat beside me I would have sat
24 right there with them and welcomed them there but
25 unfortunately most of them decided to basically do

↑

Page 64

1 nothing.

2 Q Well, but you in fact did not examine what
3 members brought into the room during the map
4 drawing sessions, did you?

5 A I think I've made that pretty clear so
6 far. No I didn't do that, nor would I do that.

7 Q And to your knowledge did anyone examine
8 what members brought into the room with them when
9 they went to draw maps at the official terminals?

10 A I think some of the activists who, you
11 know, were recording much of the time you know
12 they sat back and tried to, and I guess they were

13 trying to see what folks brought in with them.

14 Q Representative, have you watched any
15 footage of the public video feed of that map
16 drawing room in the House?

17 A No.

18 Q Okay. And I'm going to just pull
19 something up marked as Exhibit 7 here.

20 Do you see an image on my screen?

21 A Yes, I do.

22 Q Okay. So I'll represent to you that this
23 is a screenshot taken from about five hours and 14
24 minutes into the October 7 House video. This is
25 on the General Assembly's YouTube page?

↑

Page 65

1 A Right.

2 Q I'll represent to you this is the same
3 angle it's the same angle shown on tall
4 redistricting videos you see the three of the map
5 making terminals here are being used?

6 A Yeah, I don't know if they are or not
7 because staff would sit at each terminal even when

8 there was no member present generally staff, and
9 this was the central staff of the General Assembly
10 would be sitting there and I'm not sure they're
11 being used or not.

12 Q Do you see that there are folks kind of
13 gathered at several of the computer stations and
14 they have some, some things with them on the desk
15 is that a fair description?

16 A Yes but again those may be central staff.
17 The only way I would know if they were drawing is
18 to look at the other cameras to see if drawing was
19 taking place at the time.

20 Q Okay. Well, do you see up on the
21 projector screen that there are sort of four panes
22 and three of them are white and one is blue on
23 the --

24 A Yes.

25 Q -- projector screen? Okay. Would you

↑

1 agree with me that usually when they're in use
2 they're showing what looks more like the white
3 screen and when they're inactive they're showing

4 the blue screen?

5 A I really don't know. That's probably the
6 case but.

7 Q And `so I'm looking here at the desk right
8 in the center of the room. Can you see any of the
9 materials on the desk there?

10 A I mean it looks like there, there is some
11 material on the desk.

12 Q Do you think from this angle and I'll zoom
13 in just to make sure that you could see if someone
14 was using a predrawn map at the desk here?

15 A I don't think you could see it from, from
16 that particular angle, no.

17 Q And so if this was the angle in all of the
18 public redistricting videos, a member of the
19 public watching on this feed couldn't tell if
20 someone was using a predrawn map, could they?

21 A Not from simply looking at that feed, but
22 you know, again, any member of the General
23 Assembly all the Democrats could have come in at
24 any time and sat with Republicans as we were, as
25 I, you know, basically drew the map at the state



1 House.

2 Q But members of the public didn't have that
3 opportunity, did they?

4 A Well, no, but I mean members of the
5 public, you know, generally don't, whenever we're
6 having a committee meeting on you know other bills
7 they don't just come and walk around the committee
8 room and come sit with legislators.

9 Q So my next set of questions, I'm going to
10 refer to the redistricting process generally. The
11 2021 redistricting process, and just to set this
12 up when I use that term I'm talking about all of
13 the sort of procedural steps we've been talking
14 about, choosing criteria drafting plans, analyzing
15 the drafts, deciding which maps to support and
16 then actually getting them passed, and I'm talking
17 about you know House, Senate, Congress. Can you
18 confirm that you can understand how I'm using that
19 term in this next set of questions?

20 A I understand that generally but we'll see
21 what the questions are.

22 Q And that's all I -- that's all I ask. And
23 I understand you've referred to some

24 communications with some of the Senators earlier
25 in this deposition, but I'm going to ask you about

↑

Page 68

1 some communications with various individuals about
2 this process and it's going to be a little bit
3 broader because of this preface I just gave you.
4 Did you have any communications in any form, oral
5 or written or individually or in a group with
6 Senator Daniel in any way related to the 2021
7 redistricting process?

8 MR. STRACH: Objection. I guess I'm a
9 little confused now, Sam. By process do you mean
10 the drawing, the criteria, something before the
11 criteria? Is there a time frame?

12 Q I mean the choice of the 2021 criteria,
13 the drafting of the plans, analyzing drafts that
14 have been submitted, deciding which maps to
15 support, and then deciding whether to vote on
16 those ones that were proffered?

17 MR. STRACH: Okay. You can answer it.

18 A Yes.

19 Q Okay. When did you have your first

20 communication with Senator Daniel about the
21 process?

22 A You know, again without going in to what
23 he told me because I don't think that I had
24 ability to waive his privilege, the first time
25 that I would have spoken to him about the process?

↑

Page 69

1 You know, I couldn't tell you a date. My guess is
2 we probably met sometime as the chair, we probably
3 met around July or so trying to sort of sketch out
4 what, what the process would look like, you know
5 with the census results data being delayed. I
6 mean we knew there was no real reason for us to
7 get together when the census results were not
8 going to be to us until, you know July or August
9 anyway. So I, my guess is that we would have met
10 around July to go over what the plan, what the
11 process would look like.

12 Q Did you discuss the choice of the criteria
13 that you were going to use with him?

14 A And I want, I want to be clear because you

15 may have asked me if I met with him individually,
16 and I, I just simply don't recall that I met with
17 him individually. All of them, as far as I recall
18 all the meetings that I have would have been with
19 the other Senate chairs sort of as a group and not
20 individually, to clarify that. Will you ask your
21 last question again?

22 Q Sure. Well, actually I do want to go back
23 for a second. Did you meet with these people in
24 person?

25 A Yes.

↑

Page 70

1 Q Okay. And you said you thought maybe in
2 July?

3 A It probably would have been in July, but I
4 mean again, we have been in session, you know,
5 essentially since the beginning of the year. I'm
6 also the rules chair which, I mean every bill in
7 the House goes to the Rules Committee. So I mean
8 I'm constantly meeting with House and Senate
9 members. So I'm just trying to, as best I can
10 recall, I think it would have been around July or

11 so, and we met in, I know we met in person a few
12 times. I'm not saying in July. I just mean
13 throughout this process. And we, we also had I
14 think we had some phone conferences with the
15 chairs throughout the process as well.

16 Q Okay. And in these meetings did you
17 discuss the choice of the 2021 criteria?

18 A At some point obviously before a criteria,
19 before we put it out, yeah, we met to go over what
20 our proposed criteria would look like.

21 Q Can you give me some more detail? I mean
22 what was the content of your discussion about the
23 criteria specifically?

24 A Well, you know, I think for me it was
25 just, you know, essentially going through what

↑

Page 71

1 criteria would look like, I think staff had, had
2 some things drafted, and I, you know, when I say
3 staff I think that's both House and Senate staff
4 who had some proposals drafted, and, and so
5 generally we just discussed any potential changes

6 that would be made. I don't recall, you know,
7 specific debates about specific criteria. Again
8 almost all of this criteria we didn't really come
9 up with it's been around for a long time, and, so
10 obviously you know we, I do recall having a
11 discussion, again saying what I just said about,
12 about the Common Cause case in 2019 and using that
13 criteria.

14 Q You mentioned drafts. Do you have those
15 drafts in your possession?

16 A I don't, no.

17 Q Does someone on your staff have drafts of
18 the criteria in their, in your office?

19 MR. STRACH: Objection. Answer it if you
20 can.

21 A I don't know.

22 Q Do you recall the content of these drafts
23 at all?

24 A I, they were, they were very similar, if
25 not the same, as the criteria that, you know, we

↑

1 ultimately adopted.

2 Q Do you recall discussing any changes that
3 were made between the drafts and what you proposed
4 in early August?

5 A Well, I know we put forth an amendment to
6 the criteria, the criteria regarding racial data.
7 We didn't want to use any racial data at all, but
8 I, you know, we of course had heard from
9 Democratic members about their concerns about
10 potential Section 2 violations, and so as I
11 recall, the amendment that we had, it opened the
12 door for members to put forth evidence that, that
13 VRA districts were required but of course nobody
14 put that forth.

15 Q And just to be more clear. Sorry. Do you
16 recall discussions about the initial drafts before
17 you even came up with the proposed criteria that
18 you proposed to the committee, do you recall
19 discussing anything in those initial drafts that
20 ended up being changed in the version you actually
21 proposed?

22 A Well, I, to be clear, I think that really
23 the order of, of operations here was that I met
24 with the Senate chairs, we sort of generally
25 discussed what criteria would look like, and I

1 think it was after that that staff sort of based
2 on those discussions started a draft, and I mean
3 all of the, the criteria that was discussed it was
4 all traditional redistricting criteria.

5 Q And just to confirm something we discussed
6 earlier. When you're talking about these
7 conversations with me right now, you're giving me
8 only what you said in these conversations because
9 you've invoked legislative privilege as to what
10 the other legislators in the conversation said; is
11 that correct?

12 MR. STRACH: Objection. It's half
13 correct. What he, more precisely, Sam, what he's
14 doing is he's not waiving their privilege. He's
15 not invoking privilege for them. He's just not
16 waiving their privilege.

17 A So I, with that said I'm not saying
18 anything that other legislators told me.

19 Q On the basis of their legislative
20 privilege?

21 A That's right.

22 Q And so if I wanted to know what they said,
23 I would have to ask them?

24 A That's right.

25 Q Going back to these conversations, did you

↑

Page 74

1 discuss the choice of the county clusters for the
2 House and Senate with, we've been talking about
3 Senator Newton. I understand there might have
4 been others present, but with Senator Newton and
5 others in this meeting?

6 A I don't think we had any sort of real
7 substantive discussions about groupings because of
8 course, you know, I was going to draw the state
9 House map and they were going to draw the state
10 Senate map, and you know as a traditionally you
11 know the state House gives deference to the Senate
12 in drawing a Senate map and the Senate does the
13 same for the House. So for us it wasn't really,
14 we weren't concerned about the other chambers'
15 groupings it wouldn't have been something we spent
16 a lot of time talking about.

17 Q Well, did you discuss the general question

18 of whether you would predecide groupings versus
19 whether you would leave it to individual map
20 drawers to choose the groupings?

21 A Yes, yeah, and you know, I told them I was
22 going to allow individual map drawers to, to
23 select.

24 Q We discussed this a little bit earlier but
25 in your view what was the advantage of allows

↑

Page 75

1 people to select county groupings understanding
2 that the choice could have partisan implications?

3 A Well, the choice was to give members the
4 maximum possible ability to draw what they felt
5 like was the best map possible under our criteria,
6 and so for me to limit what the possibilities were
7 sort of right off the bat I thought was, was not
8 wise.

9 Q At any point during the map drawing
10 process when folks were actually submitting maps,
11 did you discuss any of the specific districts or
12 sort of broader issues with the House map with

13 Senator Newton or the others that you've referred
14 to?

15 A The question's pretty broad, did I discuss
16 anything about the House maps. I'm sure I
17 discussed something about the House maps but we,
18 we didn't, I didn't sit down and say, you know,
19 here's what I think the map's going to look like.
20 I didn't have any idea at the time what would it
21 look like.

22 Q Well, once you started drawing the map or
23 once others started drawing maps did you consult
24 about any choices you were going to make in the
25 drawing of district lines?

↑

Page 76

1 A No, no. They, you know, essentially they
2 were up -- they were down in the Senate committee
3 room I was up in the House committee room, and you
4 know, they -- we didn't have, sit down as far as I
5 recall discussions about what the House map was
6 looking like or the Senate map was looking like.

7 Q Is that true also for all we've been
8 discussing you know the choice of the criteria,

9 the clusters, the decisions on district lines, did
10 you have any communications in any form with
11 Senator Berger on those subjects?

12 A Well, not that I recall. I don't recall
13 speaking to Senator Berger about any, any
14 districts, no.

15 Q Do you recall speaking to him about the
16 choice of redistricting criteria?

17 A No.

18 Q Do you recall speaking with him on the
19 issue of county clustering?

20 A No. I don't recall having any
21 conversations with Senator Berger about
22 redistricting.

23 Q Did you have any communications of any
24 form of the type we've been discussing with
25 Speaker Moore related to the 2021 redistricting

↑

1 process?

2 A The conversations, you know, that I would
3 have had with Speaker Moore would have essentially

4 been you know updates on the how the process was
5 going, when we thought it would be done, you know
6 when we expected to have floor votes that sort of
7 thing.

8 Q So you didn't have any conversations with
9 him about choosing the criteria that were used?

10 A I don't recall talking to him about
11 criteria. I'm sure at some point I probably told
12 him about criteria but I don't even recall that
13 specifically.

14 Q Do you recall when you would have told him
15 about the criteria vaguely, like before they were
16 proposed?

17 A No. I don't know. I don't know when I, I
18 mean it wasn't an eventful conversation if I had
19 it. I'm just saying that I, I think I probably
20 would have talked to him about the criteria we
21 were proposing at some point.

22 Q And did you discuss with him the issue of
23 county clustering at all?

24 A I don't recall. It's certainly possible
25 but if I did it wasn't, again, it wasn't any sort

↑

1 of eventful conversation.

2 Q Do you have any communications of this
3 type with Senator Hise related to the 2021
4 redistricting process besides those you've already
5 mentioned?

6 A Are you asking me if I had conversations
7 with Senator Hise about, about anything related to
8 the 2021 House redistricting process?

9 Q Well, let me ask it -- let me ask it this
10 way. Did you have any individual conversations
11 with Senator Hise about the 2021 redistricting
12 process one on one?

13 A I don't think so. As I've said, the
14 meetings that I recall were with the Senate chairs
15 and me.

16 Q Do you have any written communications
17 with any of these individuals -- Senator Newton,
18 Senator Berger, Speaker Moore, Senator Hise -- at
19 all relating to the 2021 redistricting process?

20 A I would have to go back and, and look
21 through my e-mail and texts to see to say for
22 sure.

23 Q Do you think it's likely that you have
24 written communications about the 2021

25 redistricting process with these individuals?

↑

Page 79

1 MR. STRACH: Objection.

2 A I, I think it's possible. If I have,
3 there's, I don't expect there to be a lot there.
4 Obviously I don't know off the top of my head. So
5 if there is anything there, I don't think there's
6 much there.

7 Q Do you recall any particular written
8 communications of the type I've been asking about?

9 A I don't off the top of my head but I mean
10 obviously there are committee notices that go out
11 from my office. I mean there's going to be
12 e-mails regarding that. I know that, but other
13 than that, you know, I'm sure at some point along
14 the way there's some e-mail, you know, out of my
15 office whether from me or staff member or to my
16 office so, but I don't know any specifics.

17 Q Okay. I'm going to ask you just the same
18 question for other committee members who aren't
19 defendants and I'm asking again about oral,

20 written communications any kind about the 2021
21 process. Did you have any of these conversations
22 or communications with Representative Saine?

23 A Well Representative Saine is the vice
24 chair of the Redistricting Committee. So we would
25 have talked about procedure because he was going

↑

Page 80

1 to be chairing the committee when I, when I
2 presented various maps to the House committee. So
3 that would have been it.

4 Q So did you discuss the, when you say
5 procedure, did you discuss the choice of criteria
6 with him?

7 A I don't believe so, no.

8 Q Did you discuss the choice of county
9 groupings?

10 A I don't believe so.

11 Q Did you discuss anything about the actual
12 district lines as they were being drawn or before
13 they were being drawn?

14 A I don't think so.

15 Q Same question for Representative Torbett?

16 A Same with him. I don't think I had any
17 discussions with him about those things.

18 Q Representative Adams?

19 A I, I don't think so. I mean
20 Representative Adams is my neighbor, so I mean,
21 you know, other than like what -- what's the
22 question again? What.

23 Q The question is whether -- did you have
24 any conversations or communications, whether oral
25 or written, with these individuals about either

↑

Page 81

1 the choice of criteria, the choice of whether to
2 cluster counties a certain way, the district lines
3 that were actually being drawn or anything about
4 the 2021 process in that vein?

5 A Okay. I at some point spoke to
6 Representative Adams without going into what he
7 said to me, you know I seem to recall giving him
8 general prediction sort of what in general his
9 district would look like.

10 Q When you say in general what his district

11 would look like, do you mean the shape of the
12 district?

13 A Yes. I mean I knew what the grouping was
14 and how many members were, you know, in the, were
15 in that particular grouping and you could see
16 where they lived. So I mean, again, it was just
17 as a general matter, I mean the knowledge of
18 individual members about a redistricting ranges
19 from quite a bit to very little, and so obviously,
20 you know, I'm going to have -- not, not saying
21 that's what happened in this case but obviously
22 you know some members are going to, you know, ask
23 me questions about what their district may look
24 like.

25 Q Was the question related to his ability to

↑

Page 82

1 get elected in that district?

2 A I'm not going to say anything about what
3 Representative Adams said to me.

4 Q Well, have you had conversations with
5 Representative Adams about your decision not to
6 tell me what he said during these conversations?

7 MR. STRACH: Objection. Instruct the
8 witness not to answer.

9 Q You're not answering this question on the
10 basis of Representative Adams' legislative
11 privilege; is that correct?

12 MR. STRACH: Right.

13 Q Okay. Besides that conversation about the
14 content of Representative Adams's district do you
15 recall any other conversations with him?

16 A No, I don't think so.

17 Q Any other written or oral communications?

18 A No.

19 Q I realize we've been going for a good 90
20 minutes or so and I thought I would just offer if
21 you want to break for a moment. Otherwise we can
22 keep going.

23 MR. STRACH: Sure. Let's take just a few,
24 you know, five, five, seven minutes.

25 MR. CALLAHAN: That sounds good. I

↑

1 appreciate it.

2 THE VIDEOGRAPHER: We are going off the
3 record. The time is 10:52 a.m.

4 (A recess was taken.)

5 THE VIDEOGRAPHER: We are back on the
6 record. The time is 11:04 a.m.

7 BY MR. CALLAHAN:

8 Q Thank you very much. So Representative
9 Hall, before we broke we were talking about
10 communications you had that were in any way
11 related to the 2021 redistricting process and
12 you'll recall by process I meant things like the
13 choice of criteria, the drafting of the plans,
14 analyzing any drafts, deciding which maps to
15 support and then actually deciding whether to vote
16 on a particular map. So with that in mind did you
17 have any communications with any, anyone at all
18 who was not a legislator, any person, people, a
19 group, besides a legislator in any way related to
20 the 2021 redistricting process?

21 A You know, I talked to a lot of people.
22 You know, obviously the redistricting is in the
23 news in North Carolina, and so I, it's impossible
24 for me to really say with certainty all the folks
25 that I, that I spoke to. But obviously, and I,

1 you know, I would have spoken to some legislators,
2 but I didn't speak to anybody in an interactive
3 way in terms of, of a consultant or anyone like
4 that helping me draw a map.

5 Q Well, setting aside helping you draw a map
6 did you speak with anyone besides a legislator
7 about the choice of criteria that you ultimately
8 enacted?

9 A I, I mean I'm sure I would have spoken to
10 staff members who are lawyers and would have
11 spoken to other lawyers.

12 Q When you say other lawyers, could you
13 specify what you mean?

14 A I would have spoken to the lawyers who at
15 least some of the lawyers who represent us in this
16 case.

17 Q To clarify, you spoke with lawyers who now
18 represent you in this litigation about which
19 criteria to choose for the 2021 plans?

20 A I'm not going to get into you know what we
21 spoke to our lawyers about, but you know you just
22 asked me who, who we spoke to generally about

23 redistricting.

24 Q But that was before, just to clarify, that
25 was before this litigation began?

↑

Page 85

1 A Yeah, well, and that may be, but again we
2 were getting legal advice.

3 Q Oh I'm sorry. I'm sorry. I was just
4 clarifying for the record.

5 A Okay.

6 Q When you spoke with lawyers about the
7 choice of criteria, was that before you proposed
8 and enacted the criteria?

9 MR. STRACH: Objection to the extent that
10 you're asking him about legal advice. I mean
11 you're asking him that whether he talked with
12 lawyers about the choice of criteria. I think
13 what he was saying is he got legal advice from
14 lawyers.

15 MR. CALLAHAN: I apologize. I
16 misunderstood your, your response.

17 Q Going back for a moment though. Did you

18 speak with any folks who are not legislators or
19 legislative staffers about the choice of county
20 groupings or how to conducted the county grouping
21 process?

22 A I don't think so.

23 Q Did you have any communications with
24 anyone who is not a legislator about the choice of
25 how to draw specific district lines?

↑

Page 86

1 A It just would have been legislators and
2 staff to the best of my recollection.

3 Q Once members had proposed maps did you
4 speak with anyone besides legislators about sort
5 of what the maps looked like or deciding which
6 maps to support or anything like that about the
7 actually drawn maps?

8 A After the maps were out, you know, I would
9 have spoken to, you know, various media outlets
10 about those maps which I mean you can Google all
11 that of course. So yeah I would have spoken to a
12 lot of folks after the maps were out.

13 Q Did you speak to anyone besides the media

14 about the maps once they were released besides
15 legislators or the media?

16 A I'm sure I did, but again I -- you know,
17 these would have been -- everybody at the
18 legislature was focused on -- basically all we
19 were doing at the time was redistricting and so,
20 you know, folks who were at the building may have
21 asked me about it but there were no significant
22 conversations that I recall.

23 Q Just drilling down a little bit more
24 specifically did you have any communications with
25 any representative of the North Carolina

↑

Page 87

1 Republican party in any way related to the 2021
2 redistricting process in North Carolina?

3 A Do you mean before the maps were enacted?

4 Q Well let's start with that yes before the
5 maps were enacted.

6 A Okay. I don't recall speaking to anyone
7 at the party before the maps were enacted.

8 Q And what about after the maps were

9 enacted?

10 A I have seen the chairman, Michael watt Lee
11 on a couple occasions since then, and but I mean
12 we would just talk about you know general matters,
13 you know we got sued, for example, and you know he
14 was just, he I think asked me about, you know,
15 what, what the timeline was on the lawsuit and
16 that sort of thing, but we didn't get into any,
17 you know district level discussion.

18 Q Do you have any records of that
19 conversation?

20 A No, no. It was, it was in person, and I
21 think it was a couple of, a couple of occasions
22 since then.

23 Q Can you approximate about how many times
24 you've spoken with him?

25 A I think twice. Sorry I didn't mean to cut

↑

Page 88

1 you off.

2 Q No, no.

3 A But I think twice.

4 Q Okay. What about anyone at the national

5 Republican redistricting trust?

6 A I didn't speak to anybody there before
7 these maps were drawn. Since the maps have been
8 enacted and drawn I went to a, a dinner, but I
9 think it was the like the national Republican
10 lawyers group, and I seem to remember somebody
11 being there who said they were from this, the, I
12 don't know, the name that you just mentioned the
13 redistricting trust from the Republican party, but
14 I don't remember their name at all and we didn't
15 have any sort of substantive discussion about
16 maps.

17 Q Okay. What about the Republican State
18 Leadership Committee?

19 A I'm not even sure that I know who's on the
20 Republican State Leadership Committee.

21 Q Okay. To your knowledge did you have any
22 conversations with anyone affiliated with that
23 committee before the maps were enacted?

24 A I don't know who's on that. I mean
25 there's any number of committees at the party.

↑

1 You know some of which I'm probably a member of
2 and don't even know it but I mean there's a bunch
3 much committees. I would have to know who's on
4 there, but you know, I can just say as a general
5 matter I don't recall speaking to anybody who, who
6 I regularly associate with the Republican party
7 before the maps were drawn.

8 Q So that's true also of the Republican
9 National Committee?

10 A Yes. Yeah. I don't recall having any
11 sort of redistricting discussions with, with
12 anyone associated with the party. I, you know
13 somebody at from a, from my local party or from
14 another local party at some point along the line
15 they may have asked me sort of timeline and when
16 you know maps would be out. I'm sure my local
17 folks asked me that, and so I just would have told
18 them you know basically what was already public
19 and that is you know we had the, at the time we
20 felt we had to get it done by the beginning of
21 November but we knew we ultimately had to get it
22 done at the beginning of November.

23 Q Besides what was publicly available did
24 you discuss anything about the choice of criteria

25 or the choice of county clusters or anything about

↑

Page 90

1 the district lines that you were anticipating
2 drawing or that were drawn with your, with local
3 Republican folks?

4 A I, you know, I may have -- the only thing
5 that I would have discussed with local folks would
6 have been what our area would very likely look
7 like and you know in my area the groupings are,
8 you know, what largely draw the districts
9 themselves, and so I probably you know gave them
10 some I would have given them a forecast of what
11 our state House and state Senate district would
12 look like, you know, as far as Congress goes you
13 know I didn't know what district we would wind up
14 in and where I'm at geographically it could have
15 been any number of districts. So that would have
16 been the extent of my conversation with the folks
17 locally. We -- I wouldn't have had any in depth
18 discussions with them about criteria and other
19 issues like that.

20 Q To go back to the congressional map for a

21 moment. Did you speak with them about what you
22 expected the congressional district that
23 encompasses your county to look like?

24 A Yeah, as I said, I didn't know what it
25 would look like at that point, and, you know, I

↑

Page 91

1 knew that it could have we could have been in, you
2 know, one of, of many districts just again because
3 where we are geographically, and so I would have
4 told my, my local party folks that if they asked
5 me, you know, what congressional you know district
6 are we going to be in and I would have said well
7 you know, I don't know yet. It's going to be any
8 number of districts.

9 Q And just to corn firm because we've been
10 talking a little bit about communications after
11 enactment and before enactment. Did you have any
12 conversations about the choice of criteria, the
13 choice of county groupings, the city lines that
14 were going to be drawn or that were drawn in draft
15 maps or the choice of which maps that have been

16 proposed, were preferable or that you should vote
17 on anything like that, any conversations at all
18 before the enactment of the maps with anyone
19 besides legislators?

20 A I mean again, and I, I think I've answered
21 it a number of times but I also talked to staff.
22 I would have, you know, talked to, as I said,
23 local party folks, but again, I didn't talk to
24 each one of these people about every one of the
25 things that you mentioned. Obviously as you know

↑

Page 92

1 you've asked me a really broad question, basically
2 did I talk to anybody else about redistricting at
3 all and I'm sure I did, but I, you know it's
4 difficult for me to, to pin down who but I know I
5 would have spoken to staff, my local party folks
6 would have been asking me questions about what was
7 going on, but other than that I don't really
8 recall, medial outlets, and you know, again, I
9 probably I know I gave some interviews before the
10 maps were enacted so I would have been talking to
11 them. That -- that's all I can recall off the top

12 of my head.

13 Q Sure, and recognizing the question is
14 broad let's talk specifically about the district
15 lines that, you know, were actually drawn in the
16 House map. Did you speak with -- who did you
17 speak with particularly that was not a legislator,
18 not a staff, not a media person about the actual
19 district lines of the map that you were drawing in
20 the House?

21 A You know, as best I can recall, the only
22 discussions I really had outside of legislators
23 and staff and media would have been my local party
24 folks, and it would have been solely about our
25 area and you know, they're not really concerned

↑

Page 93

1 with what the other districts in the state look
2 like.

3 Q Did they make, did they have any input or
4 make any recommendations or any analysis or any
5 data or anything like that?

6 A No.

7 Q What those district lines would look like?

8 A No. The only request that I recall is,
9 you know, some folks wanted to keep Virginia Fox
10 as our Congress woman. Other folks wanted us to
11 be in Patrick McHenry's district and I think some
12 other folks wanted us to be in another district.
13 So I mean it was just a general request. It
14 wasn't a, in large part you know talking to folks
15 who, they don't they don't have a huge amount of
16 knowledge about the redistricting process because
17 you know they've never really participated in it.

18 Q Did you take these requests into account
19 when you were drawing the district lines?

20 A Well, you know, I guess in the sense that,
21 you know, I knew that they had you know requested
22 those things, but you know, there was no way to,
23 you can't make everybody happy so there's no way I
24 can give us -- I couldn't give Caldwell county you
25 know more than one Congressperson.

↑

1 Q Other than those discussions with your
2 local party folks in your area did you receive any

3 input from anyone about the House district lines
4 before you began drawing the enacted House map or
5 while you were drawing it?

6 A No, not, not that I recall, but again I,
7 you know, it's possible, you know, some lobbyist
8 or someone at the General Assembly gave me some I
9 guess just come and said what they thought a
10 district should look like but I didn't take any of
11 that into account and I didn't have any consultant
12 or anything who's you know behind the scenes
13 drawing and telling me how to draw the map.

14 Q I apologize for interrupting you.

15 A Yeah.

16 Q Do you recall any particular conversations
17 with you said a lobbyist or a party representative
18 or anything like that of the county which you
19 discussed?

20 A And I'm sorry, I cut you off now I
21 apologize. No I don't recall any of those
22 specific conversations, and I, it's because they
23 would have been nonconsequential conversations. I
24 didn't really take any of that into, to account.
25 I had too much else going on.

1 Q Do you think there are any written records
2 of any meetings you might have had along those
3 lines?

4 A I would be shocked if, if you know any of
5 those folks went and made a memo after talking to
6 me. I know I didn't make any sort of written
7 memorialization of those conversations if they
8 happened.

9 Q And I asked you this question about the
10 House lines but I know you also drew and proposed
11 a congressional map; is that correct?

12 A Yeah, I did.

13 Q And so same question about the
14 congressional map. Did you have any conversations
15 with anyone besides the local party folks we just
16 discussed, any input at all into the congressional
17 district lines either before you began drawing
18 them or while you were drawing those lines?

19 A And my answer's the same. Yeah, I did
20 have conversations with folks other than local
21 party folks but again it would have been
22 legislators it would have been staff members, and

23 you know again, it's, it's, I don't want to
24 foreclose the possibility of somebody who was at
25 the General Assembly whether a member of the

↑

Page 96

1 public or a lobbyist or someone came by and said
2 something about redistricting but again it's not
3 significant enough for me to remember the
4 conversation or who it was with.

5 Q So to your knowledge did Senator Daniel
6 have any communications of the type we've been
7 discussing with any of these nonlegislator,
8 nonstaff individuals, consultants, any party
9 officials, anything like that?

10 A I have no idea.

11 Q So you don't know one way or the other?

12 A I don't have any knowledge that he had
13 those conversations but you know, I'm not with him
14 24/7, so I can't say definitively whether he did
15 or not.

16 Q I would need to ask him that question? Is
17 that fair?

18 A I don't, I don't think you need to. You

19 might want to.

20 Q If I were to get -- sorry to interrupt you
21 if I were to get, if I wanted to get the
22 information that I just asked you, would I need to
23 ask Senator Daniel whether he had any of those
24 conversations?

25 A Presumably he would be the one who knows.

↑

Page 97

1 So.

2 Q Okay. What about Senator Newton? Do you
3 have any knowledge about any communications he had
4 with any consultants, any Republican party
5 officials or representatives, anyone besides
6 legislators or legislative staff at all about the
7 2021 redistricting process?

8 A I don't have any knowledge of that.

9 Q Do you have any knowledge of any such
10 communications from Speaker Moore?

11 A I don't have any knowledge of, of who
12 Speaker Moore talked to.

13 Q Do you have any knowledge of any of these

14 conversations or communications with involving
15 Senator Berger?

16 A No, I don't.

17 Q Senator Hise?

18 A No.

19 Q Any of the House committee members who are
20 not defendants in this case? I mentioned a few of
21 them before but I'm sure you know, you probably
22 know better than I do, but Representative Saine,
23 Torbett, Adams, Dixon, Hardister, Hastings, Jones,
24 Mills, Rogers, Szoka, Warren, Zachary, to your
25 knowledge did any of those individuals have any

↑

Page 98

1 communications with nonlegislators, nonstaff about
2 anything about the process?

3 A Not to my knowledge.

4 Q To your knowledge did any of the
5 individuals I've listed so far that's your
6 committee -- Newton, Daniel, Berger, Moore,
7 Hise -- did any of those individuals use partisan
8 data when drawing or analyzing proposed district
9 plans for either the House, the Senate or

10 Congress?

11 A Not to my knowledge.

12 Q To your knowledge did any of these
13 individuals rely on maps drawn outside the map
14 drawing room in drafting maps or in evaluating any
15 maps that were proposed?

16 A Not to my knowledge but I, again I wasn't
17 in the Senate room, the Senate committee room. I
18 would have been down in the House committee room.

19 Q Did any much these individuals draft maps
20 or discuss proposed maps with any political
21 consultants or any Republican party officials
22 along the lines of what you know what types of
23 folks we've been discussing?

24 A Not to my knowledge.

25 Q So you don't know one way or the other

↑

Page 99

1 whether any of these folks talked to anyone
2 besides you about the redistricting process?

3 A Again, I'm sure they spoke to the their
4 staff I'm sure they spoke to media outlets but

5 other than that I don't know.

6 Q Did you or any much these individuals I've
7 listed discuss anything about the 2021 process
8 with any members of the North Carolina
9 congressional delegation or their staffs?

10 A I don't know what other members did but I
11 spoke to congressional members.

12 Q Oh, what did you speak about with
13 congressional members?

14 A Well, yeah, I think, can you narrow that
15 question a little bit? I mean.

16 Q Sure. Did you speak with any members of
17 the North Carolina congressional delegation prior
18 to enactment of the House or Congressional map
19 about the district lines that were drawn in those
20 maps?

21 A Yes.

22 Q What was the content of your conversation
23 about the district lines?

24 A Well, in one instance I spoke to
25 Congressman Murphy, Greg Murphy. It was, as I

↑

1 recall, it was just essentially we heard a great
2 deal in public comment about the finger counties
3 in northeastern North Carolina being kept together
4 and, and he supported keeping those, those
5 together. The, the other member that I recall
6 talking to would have been Representative or
7 Congressman Dan Bishop, and his, I don't recall
8 him asking really for any lines to be changed or
9 anything. He just, I remember I think he told me
10 he was moving somewhere, I think closer to Union
11 County, but, but that was, that was the extent of,
12 of our conversation about what the district then
13 would look like as far as I recall.

14 Q Were those the only two conversations with
15 members of the North Carolina congressional
16 delegation that you recall?

17 A Yes, that I recall. I'm sure I very
18 likely spoke to Virginia Fox at some point. Well,
19 it's possible I spoke to her throughout at some
20 point in the process but I don't recall talking to
21 her at all about redistricting. She's my
22 Congresswoman and so from time to time I see her
23 and talk to her but I don't recall having any
24 conversation at all with her about redistricting.

25 Q And just to confirm is that those three



1 conversations those are the only ones you recall
2 prior to enactment of the districts?

3 A And you're asking me conversations about
4 redistricting, right?

5 Q Conversations about the this redistricting
6 process, yes.

7 A Yes. Those are the only representatives,
8 Dan Bishop, Greg Murphy are the only two that I
9 recall talking to about the redistricting process.

10 Q Are there any records of either of those
11 conversations?

12 A I, I don't think so. I mean the
13 conversations that I remember occurred either in
14 person or on the phone.

15 Q And to be clear, did you exclusively with
16 those individuals discuss the congressional
17 district lines or did your conversation also
18 involve either the state legislative or state
19 Senate districts?

20 A To be clear my last answer, you know,

21 obviously I have to go back and look through my
22 texts. I don't specifically remember any texts
23 but obviously I've got the ability to go look.
24 And then your last question, I don't think I spoke
25 to either of those congressional members about the

↑

Page 102

1 state House or state Senate districts.

2 Q Have you been made aware off a discovery
3 request that the plaintiffs served in this case
4 asking for communications about the redistricting
5 process?

6 A I, I am generally aware that you all have
7 served a discovery request.

8 Q Have you compiled or are you in the
9 process of compiling materials that are responsive
10 to that request?

11 A No. I've just found out about it I guess
12 yesterday evening, and of course I haven't had
13 time to, to do much since then.

14 Q Is your impression that the materials
15 we've been discussing like text messages from
16 individuals about the 2021 redistricting process

17 or the types of things that we've requested?

18 MR. STRACH: Objection. That's going to
19 involve privileged advice that we've given him so
20 I'm going to instruct him not to answer that.

21 Q I want to move on to talk a bit about the
22 maps that were actually enacted. So let's start
23 with the House map, and just to kind of get our
24 bearings. You testified earlier that you drew the
25 map that was ultimately enacted?

↑

Page 103

1 A I drew almost all of it, yes.

2 Q When you say almost all of it could you
3 clarify a little bit? What, what portions did you
4 not draw and who drew those portions?

5 A As far as I recall, the only portion that
6 I did not wholly draw would have been the, the
7 district in Wayne, Wayne and Duplin Counties, and
8 with that district I drew essentially the initial
9 district, and it's my understanding that
10 Representative John Bell made some tweaks to that
11 particular district but again I drew the sort of

12 the initial district that he changed. Other than
13 that I think that I, I think that I drew the rest
14 of the map.

15 Q And I take it you approved of the change
16 that Representative Bell made to that district or
17 those districts?

18 A Yes.

19 Q Did you consult with him at all about the
20 changes he was making while he was doing so or, or
21 thereafter?

22 A I don't think I can waive his privilege,
23 so I'm not going to you know, discuss anything
24 that he told me.

25 Q Well, did you communicate to him about the

↑

Page 104

1 content of the changes that he made?

2 A I know I spoke to him, you know, at some
3 point about that particular grouping and, and so
4 you know, I probably just would have communicated
5 to him that I was okay with changing it.

6 Q What was your understanding, and I
7 understand you're not going to tell me what he

8 said because of legislative privilege but what was
9 your understanding of the reason that he made the
10 changes that he did to your districts?

11 MR. STRACH: Objection. That's
12 legislatively privileged. It's just indirectly
13 trying to get at what would be, you can't ask
14 directly, so I'm going to instruct him not to
15 answer that.

16 Q Representative Hall, I'm asking you when
17 you saw the changes that Representative Bell made,
18 what was your understanding of the purpose of
19 those changes? I'm not asking you to tell me
20 anything about what Representative Bell told you
21 about those changes.

22 MR. STRACH: No. I mean it's the same
23 objection. You're just simply trying to do
24 indirectly what you can't do directly so we'll
25 stand on that objection.

↑

1 Q Okay. Well, Senator Hall, to clarify,
2 you're not answering that question based on

3 legislative privilege?

4 A That's right.

5 Q Okay. Whose legislative privilege sorry
6 just to confirm? Yours?

7 MR. STRACH: Representative Bell's.

8 A Representative Bell's.

9 Q Representative Bell's legislative
10 privilege, okay. Going back. So let's set aside
11 the cluster we just discussed briefly. Everything
12 else about the map. You drew it at the computer
13 terminal in the legislative building; is that
14 correct?

15 A Yes.

16 Q And your map drawing there was video
17 recorded and live streamed on the Internet?

18 A Yes.

19 Q Is that your understanding?

20 A Oh sorry. Yes, that's right.

21 Q Before you began drawing the map in that
22 room did you talk to anyone about what the map
23 could or would look like?

24 A I'm sure before drawing began because the
25 groupings, as I recall the groupings had, had come

1 out I think Duke University had done the groupings
2 and published those online, and so, you know,
3 obviously if you, you know what the groupings are
4 you can reasonably foresee what many of the
5 districts would like, not all districts but many
6 of them, and so I would have, you know, likely I
7 had spoken to my staff, you know, I would have
8 spoken to speaker staff, you know, and again this
9 is just generally about for time purposes what
10 the, what the process would look like and you know
11 how much work we actually had to do. Obviously if
12 it, you know, if there's one county grouping, that
13 doesn't take hardly any time. Lincoln County
14 comes to mind. It's a county that can fit one
15 state House district within it and so it you know
16 we know that takes almost no time to do. So we
17 would, I know we've at some point had some
18 discussions about different areas of the state we
19 would have to have to work on just by virtue of
20 the groupings, but before we started you know just
21 it was that was just a general conversation I just
22 described.

23 Q Okay. Before you started working on the

24 computer terminal had you done any work beforehand
25 on the district lines?

↑

Page 107

1 MR. STRACH: Objection.

2 Q Oh go ahead.

3 MR. STRACH: Just objection. I don't know
4 what the word work means but go ahead and answer
5 it.

6 A I think my last answer applies, yeah I
7 would have spoken to staff members and, and at a
8 minimum I would have spoken to staff members
9 about, about what the process would look like and
10 you know where we would have to work at.

11 Q Anyone besides staff or legislators?

12 A I'm sure when groupings came out members
13 would have questions, you know again, you know
14 some members know a lot about redistricting.
15 Other members who maybe have not served on the
16 committee they may not know as much, and so you
17 know, when they see on the news or online that
18 groupings have come out they're curious about what

19 their district may look like, and you know, I, I
20 am sure that I heard from a number of legislators
21 probably heard from some Democrats but you know
22 again it was these were nonconsequential
23 conversations, so I don't recall them.

24 Q Did any of these conversations in any way
25 discuss the partisan implications of particular

↑

Page 108

1 groupings?

2 A No. I, I didn't discuss with any members
3 about partisan implications.

4 Q You didn't discuss with any members but
5 it's are you saying that members potentially had
6 discussed that with you?

7 A Well, as you know, I am not going to
8 breach the privilege that other members have
9 legislative privilege so.

10 Q Representative, I haven't asked you about
11 any particular legislator. I'm asking did anyone
12 raise concerns to you about the partisan
13 preliminary indications of any county groupings
14 that have been announced?

15 MR. STRACH: Yeah, that's asking him to
16 disclose conversations by the legislators on a
17 particular topic so that's we would consider that
18 privileged and so we're going to instruct him not
19 to answer that.

20 MR. CALLAHAN: Okay. Thank you.

21 Q Did you -- and returning to the question
22 about work beforehand. Did you start drawing any
23 of the district lines before you started at the
24 public terminal?

25 A No.

↑

Page 109

1 Q Okay. Did you draw the map in multiple
2 session or were you in the terminal room the whole
3 time you drew it in one sitting?

4 A Well, as you know, I was in there at
5 multiple sessions.

6 Q And between the sessions, did you speak
7 with anyone outside the map drawing room about the
8 district lines as you were drawing them?

9 A Yes.

10 Q And who did you speak with?

11 A I would have spoken to my staff. I would
12 have spoken to again members of the speaker's
13 staff. I, you know, members, you know, may have
14 come by and asked me, you know, what their
15 districts were going to look like and, you know, I
16 would frequently print out whatever latest draft
17 we had so that they could take it with them and
18 whatever they wanted to do with it. Other than
19 that I, you know, other than quoting my previous
20 answer about media and, you know, if some lobbyist
21 or somebody happened to be at the building come by
22 I can't say I didn't speak to anybody else but it
23 primarily would have been staff and legislators.

24 Q Did anyone provide you any written
25 materials during this map drawing process between

↑

Page 110

1 the sessions in the terminal room?

2 A No. I don't think anybody gave me written
3 material.

4 Q To your knowledge did anyone give your
5 staff any written material?

6 A Not to my knowledge.

7 Q And just to go back for a moment which I
8 neglected to ask so between when the county
9 groupings were released and when you first sat
10 down at the terminal to start drawing the district
11 lines, did anyone speak with you, did you receive
12 any input whatsoever from anyone other than a
13 legislator or his or her staff about the district
14 lines?

15 A Again, not that I recall, but you know, I
16 chair the committee and I'm sure other folks, you
17 know, maybe asked me what districts would probably
18 look like and that sort of thing, but it was --
19 I certainly had nobody who was a, you know, like I
20 said, a consultant or anybody who was, you know,
21 advising me on, on drawing the maps other than the
22 folks we've already discussed.

23 Q Did any of these conversations in any way
24 relate to the partisan implications or when you
25 say what the districts would look like, do you

↑

1 mean how likely they would be to elect a
2 particular person or a person from a particular
3 party into the House?

4 A No. It would have, it would have been
5 things like, you know, where members, some of the
6 concerns that I, you know, would be heard would be
7 double bunking and that sort of thing, but I took
8 precautions not to discuss any sort of election
9 data or partisan data.

10 Q You took precautions not to discuss those
11 things. Did anyone, again besides legislators or
12 their staffers I understand we're not talking
13 about those right now but did any of these people
14 between the release of the county groupings and
15 when you started drawing district lines bring to
16 you election data or partisan conversations in
17 their conversations with you? Did they raise
18 those topics?

19 A I don't recall any conversations like
20 that.

21 Q You mentioned double-bunking. Did any of
22 them raise particular concerns about trying to
23 either avoid or ensure that incumbents were
24 double-bunked?

25 A You're asking me again other than staff

1 and legislators?

2 Q Correct, correct, correct.

3 A No, I don't recall anyone discussing that
4 with me.

5 Q So when you mentioned double-bunking, you
6 were talking only about conversations with
7 legislators and their staff, not with anyone else?

8 A Yeah. I mean you can exclude, so yes.

9 Q Okay. So you had no conversations with
10 any outside individuals outside of the legislature
11 about election results, partisan data, the
12 district lines, double, whether they would double-
13 bunk incumbents or anything of that nature?

14 A No one other than the folks I previously
15 described.

16 Q Okay.

17 A That I recall.

18 Q Do you recall about, you mentioned
19 multiple sessions do you recall about how long it
20 took you to draw this map in terms of the time you
21 actually spent sitting at the terminal?

22 A Yeah. It took a long time. I was in
23 there probably about three weeks or so. I was
24 typically there Monday through Thursday through,
25 you know, huge parts of the day, you know.

↑

Page 113

1 Obviously I have other responsibilities as rules
2 chair I have to deal with. I have a law practice
3 at home that I'm you know constantly having to
4 deal with of course, and so I was, it was from the
5 time that a drawing opened I mean it essentially
6 took just about the whole time to draw the state
7 House map just because it's, you know it's a lot
8 of work. There are 120 districts. They're
9 smaller of course population-wise than the state
10 Senate districts, and so it took, it took just
11 about the whole time that we had the terminals
12 open.

13 Q At any point when you were sitting at the
14 terminal or during breaks or anything like that
15 did you ever consult any political or election
16 data at any point when drawing these district

17 lines?

18 A No.

19 Q Did you consult any political or election
20 data at any point in preparing for the process
21 that would begin in October even if it was before
22 it started?

23 A No.

24 Q Did you consult any political or election
25 data at any point when you were analyzing your map

↑

Page 114

1 once it was drawn?

2 A You're asking before it was enacted?

3 Q Correct.

4 A No.

5 Q Did anyone on your staff do any of the
6 things that I just described, whether it was
7 consulting any political or election data while
8 you were drawing, in preparing for your drawing or
9 in analyzing the map that you actually drew?

10 A Not to my knowledge.

11 Q Well, did you take any steps to guard
12 against that from happening from your staff?

13 A Well, I chaired a committee where I
14 proposed criteria that said we would not use
15 election data and my staff obviously was well
16 aware of that. So I believe they knew and
17 understood that we were not using any sort of
18 election data so they I believe that they didn't
19 look at it.

20 Q Your basis for saying that is the enacted
21 criteria which prohibited the use of elections
22 data but you're saying that you never asked them
23 specifically not to use election or partisan data?

24 MR. STRACH: Objection. Go ahead.

25 A You know, I don't recall specifically, you

↑

Page 115

1 know, directing them not to do that, but at the
2 same time I think it was clearly understood based
3 upon the criteria that was passed.

4 Q Did you ever ask them whether they had in
5 fact consulted any party or elections data?

6 A I didn't have reason to. Even, I believe
7 that they know they knew that we were not using

8 election data, and so I didn't have any reason to
9 ask them if they did.

10 Q Did you at all rely on any map that was
11 drawn outside the public terminal room, not just
12 by you but by anyone, as either like a draft or a
13 template or a starting point or anything like that
14 for something that you drew in the terminal room?

15 A The only thing that I would have, have
16 seen would have been this sort of concepts that,
17 that staff had put together, and that was on a
18 just a few, a few times for purposes mainly of you
19 know, I couldn't be there for you know another
20 month drawing the map. We were, you know,
21 essentially running out of time, and so of course
22 I had to have some help from staff to help get the
23 map drawn.

24 Q Do you know which computers your staff
25 used to draw those draft maps?

↑

Page 116

1 A No. I don't know which computer.

2 Q Were they drawn in the public terminal
3 room?

4 A Those, the particular maps that we're
5 discussing right now, no, they wouldn't have been.
6 I don't think so anyway.

7 Q So the maps that your staff prepared were
8 not subject to the restriction of loading
9 elections or partisan data into the computer?

10 A Well, again, you know, my staff knew we
11 were not using election data, and, and I certainly
12 never saw any elections data myself and I don't
13 believe that my staff used any elections data.

14 Q I'll ask my question again. Your belief
15 aside, the computers used to draw draft maps by
16 your staff were not subject to the software
17 restriction that prevented election data for being
18 loaded into the terminal; is that correct?

19 A I don't know the answer to that. I can
20 just tell you any map that I saw did not have
21 elections data on it and I don't believe they used
22 any elections data.

23 Q Who gave you the specific draft map that
24 you used as the basis for your map?

25 MR. STRACH: Objection. That's not what

1 he said, what he testified to, but you can answer
2 that if you can.

3 A Nobody gave me a base map for the state
4 on, state House districts or any other districts.

5 Q Well, you just testified a moment ago that
6 you used as you might have said a template or a
7 shell, I forget the exact word you used but you
8 consulted a draft map when you were drawing the
9 district map that you actually used; correct?

10 MR. STRACH: Objection.

11 A So I think that what you have in mind is a
12 statewide map of all the House districts, and I've
13 never had anything approaching that. What I'm
14 talking about were specific groupings.

15 Q Okay. The draft map of a particular
16 grouping, who prepared that draft?

17 A It would have been the lawyer in my office
18 Dylan Reel.

19 Q You said Mr. Reel?

20 A That's right.

21 Q Okay. And your understanding is that
22 Mr. Reel prepared that map using a computer other
23 than a official redistricting terminal in the

24 public terminal room; is that correct?

25 A Yes.

↑

Page 118

1 Q Okay. Did Mr. Reel prepare more than one
2 of these maps?

3 A Yes.

4 Q Okay. Do you recall about how many he
5 prepared?

6 A I think probably four or five, somewhere
7 along those lines.

8 Q Do you still have those maps?

9 A No. I, I didn't have them at the time. I
10 just saw them.

11 Q You just saw them, just to clarify. You,
12 did you bring those maps into the terminal room
13 when you drew the map?

14 A No, no. I didn't I didn't bring any maps
15 in the room when I was drawing maps.

16 Q Do you believe that Mr. Reel still has
17 those maps?

18 A I have no idea.

19 Q Did you view them on hard copy?

20 A No, no. They were I just saw them on a
21 screen.

22 Q Were they on his screen, his computer?

23 A I don't know. It wasn't my computer.

24 Q Okay. Well where were you when you viewed
25 these maps?

↑

Page 119

1 A I was just outside the committee room.

2 Q Was anyone else there with you?

3 A At various times the, the speaker's chief
4 of staff would have, would have been over there
5 with us, and I, you know there may have been other
6 folks in and out, but I don't recall anybody
7 specifically other than that, yeah.

8 Q Is the chief of staff, is that Mr. Hayes
9 someone you mentioned before?

10 A No. Mr. Hayes is the general counsel, the
11 chief of staff is Neal Inman who's also an
12 attorney who was there to give advice.

13 Q Were any Democratic members or Democratic
14 staff in that room with you as you were viewing

15 the draft maps?

16 A They largely didn't participate at all.

17 If they had been there, I would have been glad to
18 talk to them and showed them exactly what was on
19 there, but they, they for whatever reason decided
20 not to really participate.

21 Q Okay. It's just a yes or no question.

22 Were there any Democratic members or any
23 Democratic staff members that viewed these draft
24 maps outside the terminal room?

25 MR. STRACH: Objection. If you can answer

↑

Page 120

1 yes or no but you can certainly explain your
2 answer.

3 A Like I said, not to my knowledge but you
4 know it's because they didn't ask and they weren't
5 there. They didn't show up most of the time.

6 Q And you never asked Mr. Reel either way
7 what type of information he had consulted in
8 preparing the draft map; is that correct?

9 A Like I said, I didn't need to. The staff
10 knew what our criteria were and so there was no

11 necessity to do that and I had no reason to
12 believe that that's, that any election data was
13 being considered.

14 Q Did this meeting where you viewed these
15 drafts -- well, I'm sorry. Let me ask one
16 question. Did you view all of the drafts in a
17 single meeting or were there multiple meetings?

18 A It would have been multiple meetings.

19 Q Okay. Was the first of these meetings
20 before you first sat down to the terminal to start
21 drawing the district lines?

22 A I don't think so, no. You know, initially
23 I just you know was simply going in and drawing
24 you know starting with the one county groupings
25 and moving on to county and so on and so forth but

↑

Page 121

1 as you get into the process it's more and more
2 difficult to draw these maps it just takes longer
3 just by you know the sheer number of districts
4 that must be drawn, and so with our tight
5 timeline, you know, it became clear we were not

6 going to have time for me to just sort of go in
7 there and figure it out, you know, without any
8 sort of plan at all in drawing these districts.
9 So again, knowing that because what the board of
10 elections had told us we had to have these maps
11 done really by early November I look at the
12 timeline there was no way we were going to be able
13 to finish. At the same time I wanted to draw a
14 congressional map as well and of course the Senate
15 has three chairs, and their Senate maps are, they
16 don't take as long to draw as the state House map,
17 and so you know they could essentially finish
18 their state Senate map or at least their proposed
19 map and they were working on congressional maps
20 and I wanted to be able to do some of that as well
21 on the House side. So you know that, that was the
22 purpose of the, of having staff work on concepts
23 you know again with just giving a heads up of hey
24 here's where a given city is we want to keep
25 cities whole; we want to keep a school maybe, you

↑

1 know, we want to keep a college or some university

2 together. That way I wasn't just going in there
3 blind.

4 Q So to be sure I'm understanding the timing
5 of everything you would sit down for a given
6 session in the public room and draw some lines and
7 then step out from the public room and consult in
8 another room close by you said near the committee
9 room and go over these maps you described as
10 concept maps that your staff had drawn and then
11 you would go back in and draw lines at the public
12 terminal? Is that a fair summary of what you just
13 said?

14 A Well, I think generally, but I, you know,
15 what I did was essentially, you know, we would
16 have, I would talk to staff about, you know,
17 whatever grouping we were going to work on and,
18 you know, if it was one that was going to be
19 difficult or, you know, we were just running out
20 of time, they would maybe work on, again, a
21 concept, and but I, you know, it wasn't that I,
22 you know, went in and just simply copied, you
23 know, whatever could be September they had. You
24 know, I just generally had in mind, you know,
25 where the towns were and where the population



1 might be in a given grouping, gave me some frame
2 of reference to work off of and I, I think for
3 anybody who's ever sat down and used the Maptitude
4 software they'll understand that it is really
5 difficult to go in in some of these groupings and
6 just sit down and just draw from scratch without
7 any sort of plan in place, and what can happen is
8 you can easily sort of just get the map get the
9 districts so jumbled up that they're not exact
10 they're splitting municipalities and, you know,
11 you're trying to obviously create the ideal
12 population size. So it is a, it's a time-
13 consuming process and especially when you're
14 wanting to do it right and follow the criteria
15 that we put forth.

16 Q Are there any records, to your knowledge,
17 of these concept maps?

18 A Not to my knowledge.

19 Q Okay. Were you, you mentioned Maptitude
20 were these concepts drawn using Maptitude?

21 A I don't know. I don't know what

22 particular software was used.

23 Q For give my ignorance of the location of
24 various rooms in the House, but was this, was this
25 room one of your offices?

↑

Page 124

1 A No. It was another member's office.

2 Q Oh. Whose office was it?

3 A I think it was Grey Mills' office, but I
4 I, I don't believe he was there for probably any
5 of the time that, that we were using his office.

6 Q Did you schedule these meetings so that
7 folks could attend if they wanted to? Did you
8 schedule them in advance or give any notice of
9 where they were going to be?

10 A What meetings are you talking about?

11 Q The meetings to, to analyze or discuss
12 these concept maps between the public sessions of
13 drawing maps?

14 A None of them were scheduled at all. I
15 mean it was just a, just a stream of, you know,
16 when we got done with one grouping we would go on
17 to the next one.

18 Q So the public couldn't view these, these
19 meetings?

20 A Well, I mean if they were out in the
21 hallway or, you know, they presumably could have,
22 but no, we didn't we didn't notice them but they
23 were again, you know, in my mind nonconsequential
24 meetings. It was just sort of a strategy session
25 to make the map drawing process more efficient.

↑

Page 125

1 Q Did you use this process for all of the
2 county clusters?

3 A No. Like I said, I, I don't remember
4 specifically how many but I think it was around
5 five.

6 Q Which county clusters do you recall using
7 this process for?

8 A As best I can remember, I think perhaps
9 Wake. I mean again some of the more difficult
10 draws. I recall Pitt County, Pitt County had
11 changed quite a bit in terms of their grouping so
12 that was going to be tough, a tough draw with two

13 incumbents there and try not to double-bunk them.

14 Q I don't mean to interrupt your thought.

15 A I'm just trying to recall if there were
16 any more. There may have been one or two others
17 but I, again, I don't recall, and that's because
18 it was more so just kind of like looking at a
19 grouping, you know, outside of a room and just
20 imagining in one's mind what a district may look
21 like inside of that grouping. That's really what
22 that was for, for my staff and me. It was just so
23 I sort of had a general concept in mind of where
24 the towns and cities and populations were so that
25 I can you know go in and at least have some game

↑

Page 126

1 plan in place for how to draw the given districts.

2 Q Right. So you mentioned Wake which is you
3 said a come indicated draw you know Mecklenburg
4 has a lot of districts is that one of them where
5 you used this process?

6 A You know, I, it may have been but with
7 Mecklenburg, you know, I essentially took the
8 current districts that, that again the Democrats

9 drew in 2019 and I basically took those current
10 districts. Mecklenburg added one district because
11 of the census, and I put that district in
12 Mecklenburg. So those districts are largely the
13 same, and I, you know, I knew that was my game
14 plan on Mecklenburg, so I don't know there was
15 anything in terms of the concept drawn for
16 Mecklenburg that I recall just because we knew
17 because there was only one seat being added that
18 you know we could pretty easily keep districts
19 very similar to what a court had already upheld
20 and the Democrats themselves had essentially drawn
21 and so we thought that was the best, best path to
22 go. So I don't know that I really needed any sort
23 of guidance before drawing that one.

24 Q Well, so is your testimony that you did
25 not consult outside of the public map drawing room

↑

Page 127

1 about how to draw the Mecklenburg districts in the
2 House?

3 A As I said I don't remember seeing -- well,

4 let me back up. You said consult anyone. Yeah of
5 course I spoke to staff about, you know, what,
6 what we would do but I don't remember if there had
7 been any sort of, of concept map drawn by staff
8 for Mecklenburg and I seem to recall we really
9 didn't need to because we knew we were going to
10 try to keep the districts the same.

11 Q Did you do that same thing of trying to
12 keep the districts the same for Wake County?

13 A Not as much because they added two
14 districts, and so it really wasn't going to be
15 workable to try to keep them same although I think
16 in large part we did that with many of the
17 districts but there was really no way to, you
18 couldn't do it as uniformly as, as it was done in
19 Mecklenburg.

20 Q So the purpose of redrawing the Wake
21 districts using a concept map was because there
22 were two new districts to draw in Wake? Is that
23 your testimony?

24 A Well, I wouldn't say that was the only
25 purpose. I mean the purpose was, you know, it

↑

1 would take hours to go, it takes a long time to go
2 draw a county that has where they have I think 13
3 districts. So, and it was going to be tough to
4 really keep the districts very similar to what
5 they were. So that was, the purpose was to, to
6 help me get it drawn in an efficient manner.

7 Q Did you use this process of concept maps
8 for Guilford County?

9 A No, I don't believe so. Not that I
10 recall, and again that's another one where we were
11 trying to basically do a least change approach
12 because Guilford had been so heavily litigated
13 over the years, and I want to say I only changed
14 like two or three precincts in Guilford for
15 purposes of population, so I don't think, as I
16 recall, I really didn't need, have a need for any
17 sort of, of help in terms of, you know, looking at
18 a concept ahead of time.

19 Q And what about Forsyth, Forsyth-Stokes I
20 think was the cluster?

21 A I, with Forsyth you know again we wanted
22 to keep it as similar as we could, and I think
23 that I, I think I saw, you know, what we're sort
24 of calling a concept map ahead of time, but I, I

25 don't even, I don't know that the one week that I



Page 129

1 wound up with was anything close to that you know
2 because again the goal with Forsyth was to keep it
3 as trim as possible. The problem with Forsyth
4 that we didn't have with Guilford is Forsyth had
5 changed its grouping from it had previously been
6 Forsyth and Yadkin and now it switched over to
7 Forsyth and Stokes, and you know of course again
8 if anybody who's ever sat down with Maptitude and
9 used it knows that you switch a grouping around
10 like that you're throwing a lot of different
11 variables, new variables in that made it really
12 difficult to, to keep it as similar to the current
13 map as we did with Guilford but we still I think
14 did a pretty good job of keeping it similar to
15 what the current map has.

16 Q But you did review a concept map for
17 Forsyth Stokes before drawing it in the public
18 terminal room?

19 A Again, I think so. I think I did, but

20 again that's, I don't know for sure. It was it
21 was nonconsequential to me in drawing that map.

22 Q It was nonconsequential, do you mean that
23 you would have drawn the exact same district
24 boundaries either way?

25 A Yeah, yeah, I think so, because I, you

↑

Page 130

1 know, like I said, I don't even know that whatever
2 I saw because I don't remember what the concept
3 even looked like, I don't know that what I drew
4 was even whatever was on the concept.

5 Q So the process was to enhance efficiency
6 but you didn't actually really look at the concept
7 map; is that correct?

8 A No, that's not what I said.

9 Q Okay. Well, you just testified that you
10 didn't actually consult or you didn't use the
11 district lines in the concept map some of the that
12 not what you just said?

13 A No. I said I don't recall what that
14 concept map really looked like, but again in that
15 particular grouping I knew basically the plan was

16 to try to keep things as similar as, as possible,
17 and so really, you know, that's the main thing I
18 had in my mind in going in to draw was keep things
19 as similar as to the current districts as I could.

20 Q What about Buncombe County? Did you use a
21 cluster map for that cluster or that county I
22 should say?

23 A You know I don't remember on Buncombe
24 because I know with Buncombe I drew a couple of
25 different maps in the room and you know there

↑

Page 131

1 Asheville is a smaller city in compared to some of
2 the others that we talked about, and you know we
3 wanted to keep municipalities whole and so really
4 what I was trying to do is keep Asheville as whole
5 as I could and it can't be kept completely whole
6 and I think we did that we kept it I want to say
7 90-some percent whole. The first map that I drew
8 it was, it didn't really -- it didn't look good.
9 It looked compact, and so I basically started over
10 from scratch, went back in and drew another map,

11 but I don't recall specifically seeing any sort of
12 concept map for Buncombe, and the fact that I went
13 in and drew again makes me think I probably didn't
14 have one, but again I don't specifically remember
15 one.

16 Q Okay. Did you use this process of
17 consulting draft maps for the congressional map
18 that you drew as well?

19 A No. With the congressional map that I
20 drew, you know, I essentially just, just kind of
21 did it, sat down and I, and in fact what I did got
22 to basically the middle of the state and, and took
23 a break, and again knowing the time constraints I
24 was under for the state House map, Sarah Stephens
25 Representative Sarah Stephens, she came in and

↑

Page 132

1 actually finished the congressional map that, that
2 I, that I you know, quote-unquote, drew I guess it
3 was a member-submitted map by me. She went in and
4 drew, I said, I said the eastern half but I'm not
5 sure she was -- I don't know it was that much. I
6 had drawn a large part of that map, and I think

7 primarily what she did was she went in and zeroed
8 out the populations for the deviation purposes.

9 Q I see. And to your knowledge did any
10 other legislators who drew maps use a process
11 similar to what you've described of using either a
12 draft or a template drawn by staff and evaluating
13 that outside of the public terminal room?

14 A Yes. The Democrats did.

15 Q Okay. I guess I'll rephrase my question.
16 To your knowledge did any Republican members do
17 this process?

18 A Not to my knowledge.

19 Q So only you on the Republican side?

20 A Yes, as far as I know.

21 Q Okay. I'd like to move to looking at some
22 of the actual districts. Actually please --

23 MR. STRACH: Yeah. Do you want to take a
24 lunch break now?

25 MR. CALLAHAN: Well, that was -- that was

↑

1 where I was going. I was going to offer this up

2 as a natural breaking point if you'd like to but
3 it's up to you.

4 MR. STRACH: Yeah. That's fine with me.
5 You want to just come back at, I don't know, maybe
6 10 till 1, 12:50.

7 MR. CALLAHAN: Yeah. You know I'm, I'm
8 definitely not going to need that much time but
9 happy to do so if that's okay.

10 MR. STRACH: All right. Let's take a
11 little over 30 minutes.

12 MR. CALLAHAN: All right. You said 12:50.
13 Okay. Let's plan on that.

14 THE VIDEOGRAPHER: We are going off the
15 record. The time is 12:12, 12:13 p.m.

16 (A lunch recess was taken.)

17 THE VIDEOGRAPHER: We are back on the
18 record. The time is 12:54 p.m.

19 BY MR. CALLAHAN:

20 Q Thank you, and thanks Representative Hall.
21 So just before we broke we were discussing what
22 you refer to as strategy sessions where you
23 reviewed and discussed some things I think you
24 described them as concept maps that were drawn on
25 computers outside the public terminal room. I

1 just wanted to clarify a few points about these
2 strategy sessions we've been discussing. Can you
3 list every individual who was in any one of these
4 strategy sessions for me?

5 A You know, as far as I recall it would have
6 been Dylan Reel who's a general counsel in my
7 office or was a general counsel in my office at
8 that time, and Neal Inman the Speaker's chief of
9 staff. You know, at some point my legislative
10 assistant, Lucy Harrill probably would have come
11 by or come in although she didn't have any real
12 part in discussions about redistricting. I mean
13 she just you know would have been dealing with
14 other matters for me. You know, in terms of those
15 meetings I'm not sure who else would have, would
16 have come by in one of those meetings. I'm sure a
17 number of other members would have come by just,
18 you know, sort of wandering around that we would
19 have met with, but other than that I think that's
20 about it.

21 Q Do you recall any specific other members
22 who attended any of these meetings?

23 A I am pretty sure Jay Adams came by at some
24 point. Again none of these members are taking
25 part in, the other members that came by weren't



Page 135

1 taking part they weren't taking part in any sort
2 of substantive discussions about what, what
3 districts would, would look like.

4 Q Any, anyone besides representative Adams
5 that's coming to mind in terms of?

6 A And yeah, to be clear we're talking were
7 the meetings I discussed earlier sort of outside
8 the committee room?

9 Q That's right.

10 A That's what you're talking about? Yeah.
11 No members that I recall. I seem to recall
12 talking to Frank Iler, Representative Frank Iler
13 in just outside the committee room. I think
14 representative Allen McNeill came by.
15 Representative Jamie Boles would have come by, and
16 I'm just trying to think through anybody else
17 that, that would have, would have come by. Those

18 are all that I remember.

19 Q Could you remind me, you said your
20 legislative assistant. What is the name of your
21 legislative assistant?

22 A Lucy Harrill.

23 Q Can you spell that?

24 A L-U-C-Y, Harrill, I think it's
25 H-A-R-R-I-L-L.

↑

Page 136

1 Q And could you spell Mr. Reel's last name
2 as well?

3 A REEL.

4 Q And he is one of your staff members?

5 A Yes. He's the he was the general counsel
6 at the time.

7 Q General counsel. General counsel of your
8 staff, that's right. And, and the speaker's chief
9 of staff. I'm sorry, the names are, you know,
10 escaping me a little bit merchant moment. The
11 Speaker's chief of staff who also attended, what
12 was the chief of staff's name?

13 A Neal Inman, I-N-M-A-N.

14 Q Thank you. Thank you. Any other
15 legislators or legislative staff coming to mind
16 who attended any of these strategy sessions?

17 A I don't think so, but again you're
18 characterizing it as attending strategy session,
19 and I've just given you a list of folks who I
20 remember being over there, period. You know,
21 other than Dylan Reel and there really, and for
22 the most part it was just Dylan Reel who was
23 involved with me in talking about you know what
24 the draw would look like, and I mean that was, he
25 was predominantly the one who would be talking to

↑

Page 137

1 me about that.

2 Q But others were present in the room while
3 he was talking with you?

4 A No, no, it wouldn't have been. You know,
5 some of the other members who came by, they were
6 not there to discuss maps that I was about to go
7 out in the room and draw.

8 Q Was anyone besides and Mr. Reel present in

9 those discussions about the maps that you were
10 about to go draw?

11 A There were times when Neal Inman was
12 there.

13 Q In the room?

14 A Yes.

15 Q Do you recall on about how many occasions
16 he would have been there?

17 A You know, I don't. He would have been
18 there for several. I was there for three weeks,
19 almost you know every, almost every business day.
20 So he would have been there several times.

21 Q Did you have one of these sessions at
22 least once every business day that you were there?

23 A I'm not sure that we did it every day.
24 You know, especially early on. Like I said, when
25 I started, I just went in the room and, and drew

↑

1 it drew the map you know sort of as quickly as I
2 could, but as time goes on you reach some of the
3 more and more difficult draws in terms of time
4 consumption and just again getting population

5 grouping and when you get those I really needed
6 some more help at that point, and you know when
7 that was I'm going to say probably into the, well
8 into the second week, I think when we would have
9 started you know sort of having a more after game
10 plan before I went in to draw, but, but I, you
11 know, I don't know, I can't sale with any
12 specificity.

13 Q Can you estimate the total number of times
14 you met to discuss these concept maps?

15 A To discuss concept maps?

16 Q Yes.

17 A Well, as I said earlier I think I saw
18 maybe five or so of those maps. So it would have
19 been that, that number or fewer times.

20 Q Well, let me clarify. Did you have these
21 strategy sessions with Mr. Reel and others to
22 discuss things other than the concept maps?

23 A Sure, yeah.

24 Q And how many times total during the time
25 that you were drawing the House map did you meet



1 to have what you've described as strategy sessions
2 outside the public hearing room?

3 A Well, I would have, you know, consulted
4 with my staff and that mainly being Dylan Reel. I
5 mean essentially every day the drawing process you
6 know we would have discussions about the process
7 and I mean, you know, just about every matter
8 regarding redistricting.

9 Q Would you meet in the same room where you
10 met to discuss these concept maps every time you
11 met with Mr. Reel?

12 A No.

13 Q And so when Mr. Inman was with you, was
14 that always in the same room?

15 A No. You know, I would meet with them
16 either in my office, some I think we may have met
17 in Mr. Inman's office, but that, in general I
18 think those were the only other two places where
19 we would meet.

20 Q Did Mr. Inman view any of the concept maps
21 you've referred to?

22 A I don't know.

23 Q Do you recall him being in any of the
24 sessions where you discussed the concept map?

25 A He may have been but I, you know, again, I

↑

Page 140

1 can't say for sure. This was just a few times,
2 and like I said, it was a nonconsequential meeting
3 for me so it's not very memorable.

4 Q When you were viewing concept maps, was
5 that always in the same room?

6 A I think that I, you know, saw them in the
7 room we've been talking about, and I probably
8 also, I maybe, I may have seen some of them in my
9 office as well but I think that would have been
10 it.

11 Q We talked a little bit about the computer
12 that you viewed these on and I just want to be
13 clear for the record. Whose computer was it on
14 which the concept maps were displayed that you
15 were looking at?

16 A I don't know whose it was. It wasn't
17 mine, as I said earlier.

18 Q Was it Mr. Reel's computer?

19 A As I said I don't, I assume, I assume. So
20 I didn't ask him.

21 Q Was it a laptop computer?

22 A Yeah, I think, yeah I think so.

23 Q Was it a laptop that to your knowledge was
24 issued by the legislature?

25 A I don't know.

↑

Page 141

1 Q Did it look similar to laptops that are
2 issued by the legislature?

3 A I mean, I don't know, I don't know the
4 answer I mean they're all you know most laptops
5 are black and they have screens but I don't know.
6 I didn't I didn't look to see what sort of, what
7 the make and model of the laptop was.

8 Q Well, was it a, was it a Windows computer?

9 A I don't know, I don't know the answer to
10 that. I'm not sure.

11 Q Okay. So if we wanted to review the
12 contents of this computer or these concept maps,
13 who do you think would be the best person to get
14 in touch with? Who do you think most likely has
15 this computer?

16 MR. STRACH: Objection. Go ahead and
17 answer.

18 A I don't have any idea who has the
19 computer.

20 Q Do you think it's most likely that
21 Mr. Reel has the computer give than he was the one
22 showing you the concept maps?

23 MR. STRACH: Objection. Go ahead.

24 A I have no idea if he still has the
25 computer or not.

↑

Page 142

1 Q Do you know what software, we discussed
2 this a little bit before I just want to make sure
3 I'm clear. Do you know what redistricting
4 software was used to draw the concept maps?

5 A No.

6 Q When you were viewing it were you viewing
7 it in a software application, or were you viewing
8 something like a PDF that had been created from
9 the software?

10 A Yeah, I'm really not sure. I just saw,
11 you know, those, those maps. So I didn't really

12 look to see what software was or, you know, if it
13 was a PDF or not.

14 Q Mm-hmm. What, were the maps you were
15 looking at did they have VTD's showing?

16 A It seems like some of them did I think so,
17 yeah.

18 Q Was there any shading or information that
19 gave you any more specific information about what
20 VTDs you were looking at, VTD number for example?

21 A No. I don't remember seeing any other
22 identification of the VTDs other than just the,
23 the lines themselves.

24 Q And so you're aware that there are
25 multiple different softwares that you can use to

↑

Page 143

1 draw district lines, aren't you?

2 A Yes.

3 Q And you know that some of them have
4 election data preloaded on to them?

5 A Sure.

6 Q You're aware of software used for

7 redistricting that has election data preloaded?

8 A I'm aware that that exists. I don't use
9 it and I have never used any software that uses
10 election data.

11 Q Are you familiar with Dave's
12 Redistricting? It's a web application used for
13 drawing district lines?

14 A I've heard of it, yes.

15 Q Are you aware that Dave's Redistricting
16 has election data preloaded on to it?

17 A Yes, generally, yes.

18 Q Are you aware that Dave's Redistricting
19 also has racial data preloaded on to it?

20 A I'm not sure. Like I said I've never used
21 it, but you know, it might.

22 Q Can you say with certainty that the maps
23 you were looking at were not drawn with Dave's
24 Redistricting?

25 MR. STRACH: Objection. Go ahead.

↑

1 A I've already answered the question. I
2 don't know what application or software was used

3 on drawing the map.

4 Q Did the map look similar in form to the
5 software that you were using on the public
6 terminals?

7 MR. STRACH: Objection. Go ahead.

8 A I don't know if I understand.

9 Q Let me try to be more clear. Did the
10 format of the map you were looking at that you've
11 referred to as a concept map that you were viewing
12 outside the public terminal, did that look
13 different in form to the maps drawn on the public
14 terminals?

15 MR. STRACH: Objection.

16 A And I think it's basically the same
17 question but I mean they looked like maps that
18 had, you know, districts that were different
19 colors drawn in them, and of course to be clear
20 when I say different colors, it was just the
21 district itself. There was no election data none
22 of the shading or anything of that nature on
23 there. It was a grouping with some districts
24 inside of it that were color, you know, green or
25 yellow. So I mean in that sense, you know, it was

1 similar to that, but I, I didn't see any, in fact
2 there was no population deviation listed there was
3 nothing listed on there that I saw on those maps.

4 Q But population deviation was listed on the
5 public terminals that used Maptitude; correct?

6 A Well, you had to turn it on, so it wasn't
7 just automatically on there and sometimes it
8 wouldn't be on there and I would ask to put it up
9 because I found it easier to draw districts if
10 that number was shown for each change.

11 Q I won't belabor this too much longer. You
12 drew a map over, you know, multiple weeks in the
13 public terminal room using Maptitude; correct?

14 A Yes.

15 Q Okay. Did the maps you were looking at,
16 the concept maps, did that look like Maptitude,
17 the same software you had been using in the public
18 terminal?

19 MR. STRACH: Objection. Go ahead.

20 A Like I said, I don't I don't know if it
21 was the same software or not. I just, you know, I
22 don't know, again I think I've answered the

23 question the best I can. I simply don't know what
24 their software application was.

25 Q Okay. Were there any cameras in the room

↑

Page 146

1 where you were draw -- or sorry -- where you were
2 viewing these concept maps?

3 A No.

4 Q So unlike in a public terminal room where
5 there were cameras and live streams there wasn't
6 any live stream of the discussion or viewing of
7 the concept maps?

8 A No.

9 Q Forgive me, this is really a basic
10 question, but in the public hearing room is it
11 true that anyone on a legislator's staff would be
12 allowed into the public hearing room to sit with
13 you at the terminal?

14 A Yes. I think that's generally true.

15 Q Okay. Any legislator obviously could be
16 in the room but also anyone on a legislator's
17 staff or, for example, you know, Speaker Moore's
18 chief of staff, anyone like that could be in the

19 public hearing room; is that correct?

20 A Yeah, sure. If any member had one of
21 their staffers in there, I would have I would have
22 allowed that and as I told you previously I, I
23 expected that. I'm not, I'm still to this day
24 really not sure why Democrats chose not to
25 participate in this process.

↑

Page 147

1 Q So Mr. Reel could have come with you into
2 the public hearing room freely?

3 A As could the staff for the Democratic
4 leader in the House or any other Democratic
5 member.

6 Q Did Mr. Reel come in with you into the
7 public hearing room?

8 A Yeah, at times.

9 Q Mm-hmm. So I guess just to clarify.
10 There was no one in your strategy sessions that
11 would have been forbidden in the public hearing
12 room; is that correct?

13 A Yeah, that's right.

14 Q And the concept maps that you were
15 viewing, am I correct in saying that if you just
16 printed one out you could have just brought into
17 it the public hearing room and consulted it; is
18 that correct?

19 A I could have but I didn't, I didn't print
20 anything and bring it in there.

21 Q But there's no restriction on you printing
22 out a concept map in physical hard copy or even
23 for that matter bringing a laptop in and just
24 consulting the concept map in the public hearing
25 room?

↑

Page 148

1 A No. There's no restriction on that.

2 Q Okay. Did you ever bring, I think you
3 just said this but I want to clarify, you didn't
4 bring in either an electronic version or a
5 physical version of a concept map into the public
6 hearing room, did you?

7 A No.

8 Q Okay. So why did you not discuss and look
9 at the concept maps in the public hearing room as

10 opposed to in these private rooms?

11 A Well, there's really no reason to because,
12 you know, like I said, it was, it wasn't something
13 that I was going to go in and copy. It was just a
14 general idea of what districts may look like. So
15 I, I didn't see it as something to go in and copy.
16 It was just sort of an idea of where towns and
17 municipalities population areas are to sort of
18 help me more efficiently draw the map.

19 Q If it was a general guide, why not bring
20 it into the public hearing room?

21 A I just, I didn't see any need to do that.
22 Yeah, I.

23 Q What, what was the need to have it be in a
24 private room?

25 A I don't guess there really was a need to

↑

Page 149

1 do that I mean that's just where we met to discuss
2 it.

3 Q I mean looking back do you wish you would
4 have done it in the public room as opposed to the

5 private room?

6 MR. STRACH: Objection.

7 A No.

8 Q Okay. Well, you just said there wasn't
9 any reason to do it in the private room and I just
10 wanted to confirm. There was -- if you had done
11 it over again, you would have done this in the
12 private room as opposed to the public room?

13 MR. STRACH: Objection. Go ahead.

14 A I don't see any reason to change. I
15 didn't use any election data. I didn't use any of
16 the data or anything else that goes against our
17 criteria.

18 Q But is it fair to say that if you had
19 reviewed these maps in the public room the public
20 would have been better able to verify that you did
21 not use election data or partisan considerations?
22 Is that fair to say?

23 MR. STRACH: Objection. Go ahead.

24 A I don't know that that helps the public
25 one way or the other. I mean it's kind of like if

↑

1 I sit around and think of a map in my mind, you
2 know what it might look like and it would be like
3 saying, well, I have to immediately dictate that
4 out and Tweet it out so that everyone can know
5 what's going on in my head every second. You
6 know, again, we didn't use anything that the
7 criteria disallowed, so no, I don't see any reason
8 I would have done it differently.

9 Q Okay. I just want to be sure if someone
10 wanted to know about what happened in these
11 strategy sessions where you discussed these
12 concept maps there's no place I can find any
13 information about that on the General Assembly's
14 website; correct?

15 A I don't suppose so, no.

16 Q Okay. So you know I can go to the General
17 Assembly's website and I can download member
18 proposed maps but I can't download your concept
19 maps; correct?

20 A No.

21 Q And I can't view a video like on YouTube
22 or the General Assembly's website of the
23 discussions of these concept maps; correct?

24 A No, you can't.

25 Q And so if I wanted to get more information



1 about these strategy sessions, I would need to get
2 that information from you or someone present; it's
3 not publicly available; is that correct?

4 A I guess if you wanted that information,
5 yes.

6 Q And there's no way from public information
7 that I can learn the identities of the staff
8 members present in these strategy sessions? Of
9 course I've asked you on the record about that but
10 there's no publicly available information on the
11 Internet about that, is there?

12 A No.

13 Q And you didn't disclose in any of the
14 House or joint Redistricting Committee meetings or
15 in any public setting for that matter your
16 participation in the strategy sessions where you
17 evaluated concept maps, did you?

18 A No, but I don't recall anybody asking me
19 every step that I took in the process.

20 Q Sure. Could I pull up something I've

21 labeled as Exhibit 19? This is a transcript of
22 the October 5th redistricting hearing committee,
23 your committee. I'm going to go to page 15.

24 A I have it pulled up.

25 Q I've got it now. Sorry about that. Are

↑

Page 152

1 you seeing my screen here? It's showing a PDF of
2 a transcript?

3 A Yeah.

4 Q So starting on line 15, could you read
5 just that paragraph there, please I can zoom in?

6 A This is a rule that I want to make sure
7 all members are clear on --

8 MR. STRACH: Hold on. Read it a little
9 more slowly for the court reporter.

10 A Yeah. Okay. And this is a rule that I
11 want to make sure all members are clear on, but
12 this committee and the House as a whole will only
13 consider maps are drawn in this committee room, on
14 one of the four stations. So if a map is not
15 drawn on one of these four stations in this
16 committee room during those committee hours that

17 the committee is open, then those maps will not be
18 considered for a vote by this committee and of
19 course will not be considered for a vote by the
20 House.

21 Q So in light of what we're discussing do
22 you think that drawing, using unknown computers on
23 unknown software what you've called concept maps
24 outside the public hearing room, discussing those
25 in a private room that's not videoed or

↑

Page 153

1 transcribed in the concept maps are not available
2 to the public and then using those as a baseline
3 to draw district lines in the public terminal
4 room, do you think that's consistent with the rule
5 that you announced there on October 5th at that
6 Redistricting Committee hearing?

7 MR. STRACH: Objection. Go ahead and.

8 A Yes.

9 Q Okay. Explain that to me.

10 A I think it's consistent with the rule that
11 I just read.

12 Q You think that using a privately drawn
13 concept map drawn on a computer that you don't
14 know what software was used that did not have a
15 restriction on the use of election or partisan
16 data and that was not made publicly available to
17 anyone is consistent with the rule that the House
18 will, quote, only consider maps that are drawn in
19 this committee room on one of the four stations?

20 MR. STRACH: Objection. Go ahead.

21 A Yeah it's consistent with that, and I
22 think part of your question sort of
23 mischaracterized the situation. I never saw any
24 election data at all. So I think you mentioned
25 somehow something that could, your question in

↑

Page 154

1 some way left open the door in my opinion that
2 this could have been election data. I didn't see
3 any election data. Any maps that were put forth
4 on the committee for vote on the committee on the
5 House floor were drawn completely by me in the
6 committee room.

7 Q Well, let me be very clear. You've

8 testified that the concept maps that you
9 considered outside of the public hearing room,
10 that that informed how you drew the district lines
11 in the public hearing room. You do not know what
12 computer those were drawn on, what software they
13 were drawn on and you cannot ensure to me that
14 they were not drawn using election data or
15 partisan considerations; is that correct?

16 MR. STRACH: Objection.

17 A Yeah, I don't have any reason to believe
18 election results data was used my staff knew that
19 we were not using election results data, and so I
20 certainly never saw any election results data at
21 all and again, I drew all the maps that I drew on
22 the public terminal.

23 Q But you have no reason to know that the
24 maps that you were viewing were not drawn using
25 partisan considerations or data besides the

↑

1 general existence of a criterion that for bad the
2 use of election data?

3 MR. STRACH: Objection.

4 A Yeah, I, that in my staff's general
5 understanding of, of what was going on in the
6 process and the fact that we had decided not to
7 use election results data.

8 Q Okay. Stepping aside from the rule that
9 you announced at this October 5th hearing. Do you
10 think that drawing or should I say considering
11 predrawn concept maps that are then going to
12 inform the district lines drawn in public view but
13 doing that outside of public view, do you think
14 it's consistent with the spirit of transparency
15 that we've been discussing that I believe you
16 referred to earlier in our deposition?

17 MR. STRACH: Objection. Go ahead.

18 A Sure. I think that what we undertook was
19 literally the most transparent process for
20 redistricting in this state's history and keep in
21 mind as I did through this process that you know
22 we weren't required to follow any of these
23 transparent processes that we did, and so yes, I
24 am completely comfortable with that for the first
25 time in the history of this state the legislature

1 voluntarily viewed these districts out in the
2 public for full public view which is much more
3 than has ever been done in the past, and so yes, I
4 think it is in line with the spirit of that rule.

5 Q Well, ask it a slightly different way do
6 you think the process would have been more
7 transparent that instead of meeting in a private
8 room outside of the video feed and discussing maps
9 that were drawn on nonpublic terminals using
10 unknown software on an unknown computer, do you
11 think that instead if you had done that in the
12 public hearing room that the process would have
13 been more transparent?

14 MR. STRACH: Objection.

15 A I don't think it would have made any
16 difference at all. You could sit there and watch
17 me draw districts and often I would explain why
18 the district was being drawn the way that it was
19 drawn. So no, I don't think it would have had any
20 real impact on transparency.

21 Q You don't hit the would have been more
22 transparent to do it the way I said versus the way
23 you did?

24 MR. STRACH: Objection. Answer again.

25 A Yeah, again, I've already answered the

↑

Page 157

1 question, but the other thing I'll add to it is
2 the Dem completely failed to participate in the
3 process they could have come and sat with me the
4 entire time frankly they could have come in any
5 room with me that they wanted to come into but
6 they didn't participate in the process.

7 Q Did you show the concept maps to any
8 Democratic member or any Democratic staff?

9 A They didn't ask me.

10 Q Did you tell them that these even existed
11 in the abstract that you were using concept maps
12 outside the public view?

13 A No, but I didn't see them really to tell
14 them about it. They weren't there.

15 Q If you had seen them, you would have
16 disclosed it to them?

17 A Sure. If they had asked me to, to go talk
18 about what a map might look like I would have been

19 glad to have done that with any Democratic member.

20 Q And you didn't again disclose this at any
21 of the hearings where multiple members, Democratic
22 members in particular, raised concerns
23 specifically about the use of maps that were drawn
24 outside of the room, the public room; is that
25 correct?

↑

Page 158

1 A I think they were mainly concerned about
2 improper data being used outside of the, the
3 public room, but no. I didn't discuss any of that
4 in those meetings because I didn't think that it
5 was relevant to their concerns, just like every
6 thought that passes through my mind about
7 redistricting the public can't see that and
8 Democrats can't see that either but I don't think
9 anybody reasonably expects me to like I said
10 earlier memorialize everything that crosses my
11 mind.

12 Q Well crossing your mind aside think we
13 discussed earlier that Representative Reives for
14 example, you know, raised a concern at the October

15 5th about just preventing the bringing in of maps
16 drawn on the outside, and you testified earlier
17 that you for practical reasons didn't think that
18 you could check everyone's stuff as they came into
19 the room. You don't think that the consultation
20 of maps drawn outside the public hearing room and
21 using them as the basis for maps drawn inside the
22 public room would be material to someone's
23 concerns about relying on outside maps is that
24 your testimony?

25 MR. STRACH: Objection.

↑

Page 159

1 A You know, I don't know what would be
2 material to them, but again, I don't think that it
3 hurt the transparency of the proceedings any more
4 than legislators talking to each other outside the
5 committee room about what districts would look
6 like.

7 Q Let's move on to the, to the enacted House
8 map. So we've talked I know quite a bit about
9 sort of the process that led to this map that's in

10 fact what we've been discussing at length just now
11 but I wanted to talk a bit about some of the
12 actual districts and I'm going to start with
13 pulling up a map that I've marked here as Exhibit
14 8. You'll just have to give me one moment. Okay.

15 Do you see a map here of Guilford County?
16 It's labeled map 35 in the upper left-hand corner?

17 A Yes.

18 Q Okay. So I'll just represent to you this
19 is map 35 from an expert report of Dr. Christopher
20 Cooper. He's one of the plaintiffs' experts in
21 this case. This is from his report that was
22 disclosed on December 23rd, and just a bit about
23 what you're seeing. Well, I should start actually
24 with the question.

25 Have you seen this map or maps that look

↑

Page 160

1 like this with this kind of red-blue shading?

2 A Have I ever seen maps that -- are you
3 asking have I ever seen a map that has red or blue
4 shading on it?

5 Q I'll be a little more clear. Have you

6 seen Dr. Cooper's report that he submitted in this
7 case?

8 A No.

9 Q Okay. Have you ever seen a map that's
10 shaded in this way where individual VTDs are
11 shaded either red or blue?

12 A I have at some point in life, yes, seen
13 these.

14 Q Have you somewhat recently like in the
15 past year or so?

16 A I didn't look at them during the
17 redistricting process but obviously since that
18 time a number of groups have analyzed these and
19 they're you know things like this are all over
20 Twitter so I mean I generally understand what that
21 means, but I didn't, to be clear I did not consult
22 any map with election or partisan data on it in
23 drawing the maps that were enacted.

24 Q Sure. Just a little bit of information
25 then about what particular, you know, shading



1 format this is using. So you'll see here that
2 these kind of thin lines within each district
3 those are VTD boundaries and they're shaded using
4 election results from the secretary of labor and
5 Attorney General races from 2020, and so when a
6 given VTD is a very dark shade of blue, that means
7 that particular VTD in those races voted more
8 heavily in favor of the Democratic candidate, and
9 so vice versa, darker shade of red means a more
10 heavily Republican. Does that generally make
11 sense?

12 A Yes.

13 Q And just to be clear because this can be a
14 little bit confusing the shading is done using the
15 absolute difference in number of votes and so when
16 something is really heavily shaded either blue or
17 red, that can reflect differences in population of
18 the VTD; it doesn't necessarily mean that like the
19 vote share percentage was disproportionately
20 higher in that particular VTD? Does that sound
21 familiar?

22 A Sure.

23 Q Sorry to go over the basics like that.
24 Okay. So with that in mind let's just look at
25 Exhibit 8 here. So this is House districts 57,

1 58, 59, 60, 61 and 62 and these are all within
2 Guilford County; right?

3 A All of those are within district, in
4 Guilford County but are you saying are those the
5 districts from the enacted plan?

6 Q Yes.

7 A Okay. They look to be, but yes that all
8 looks like it's in Guilford County.

9 Q Okay. Yes, and to be very clear this
10 Exhibit 8 here is taken from the enacted House
11 plan that you drew; right?

12 A Yeah.

13 Q So you know, up about this map here splits
14 the City of High Point?

15 A Are you asking me that?

16 Q Yes.

17 A I'm not sure if it does or not.

18 Q Oh okay. Let me, let me go quickly to
19 another exhibit. This is Exhibit 9 which is
20 another map from Dr. Cooper's report. This is map
21 36 going to it here.

22 A Okay. Yeah.

23 Q Okay. So you see this, the way this map
24 works is it has the municipal boundaries in kind
25 of colored shading? I'm just trying to be clear

↑

Page 163

1 for the record. I know you can see it. So you've
2 got High Point here in purple and Greensboro here
3 in green, and this shows the district boundaries
4 relative to the municipal boundaries?

5 A Yes.

6 Q With that in mind, you would agree that
7 High Point is split here on this map?

8 A Yes.

9 Q And you'd agree that it looks like
10 Greensboro is a little bit of it is in every
11 district right it's split six ways?

12 A Yes. It's -- well, I don't know about six
13 ways, but it's split several ways.

14 Q So you'll see that there's part of
15 Greensboro part of that green of Greensboro is in
16 every one of the districts in this map. Does that

17 look right?

18 A Yes.

19 Q Okay. So just going back now we've
20 established that about the municipalities just
21 going back to Exhibit 8 for a second this is back
22 to the red-blue shading. So all of the parts of
23 High Point in Guilford County here, they could
24 have been kept in the same House district; right?

25 A I guess that's possible but I mean again I

↑

Page 164

1 would have to play with Maptitude and the various
2 populations to make sure.

3 Q Well, as the principal drafter of this map
4 you weren't aware of any particular reason that
5 you had to split High Point; right? It wasn't
6 required somehow?

7 A I don't know. I didn't spend a lot of
8 time on Guilford County and trying to move many
9 precincts around. As I've said before on Guilford
10 County it had been litigated quite a bit and
11 basically the map that you see in front of you
12 which I think almost all of it was drawn by Nathan

13 Perselli or Persily perhaps I don't know the
14 pronunciation of the last name, but it was an
15 expert in one of the prior he was the court's
16 experts in one of the prior cases, and he drew
17 this map and all I did I went in and I think I
18 changed, I don't know, two or three precincts
19 maybe just for population purposes because a
20 couple of districts were over plus or minus 5
21 percent and that was the extent of my work in
22 Guilford County.

23 Q Do you recall which VTDs you changed?

24 A I don't off the top of my head because I
25 literally just sat down and pulled up the

↑

Page 165

1 populations of VTDs and had the staff, the central
2 staff that is click on the ones that, that sort of
3 made sense populationwise, and that was it.

4 Q But looking at what we have here, what
5 kind of came out of that process, you agree that
6 generally when you were drawing the map were you
7 trying to minimize municipality splits; right?

8 A I think that's generally true but I also
9 think it's generally true that where districts
10 have been previously heavily litigated I did what
11 I could to, to keep those districts very similar
12 to what courts had already upheld.

13 Q So in your view is that a general
14 principle; it's better to preserve a district line
15 that had been already drawn and litigated than to
16 avoid a municipality split?

17 A Well, you know, I don't want to say one's
18 better than the other, but obviously I would like
19 to see the enacted map withstand legal scrutiny
20 and so in those areas that had been previously
21 heavily litigated I thought it safest to keep
22 those districts as similar as possible.

23 Q Litigation aside, do you agree that
24 generally all else being equal you're trying to
25 split as few municipalities as you can?

↑

Page 166

1 A Yeah, I mean of course that's one of our
2 criteria, yes.

3 Q Mm-hmm. We'll just go back for a second

4 is your understanding of the criteria that you
5 should minimize municipality splits?

6 A I think for municipalities the way I view
7 it is you want to try to keep municipalities as
8 whole as you can.

9 Q Just looking for a moment at the district
10 boundaries around High Point which we've been
11 discussing you'd agree with me that the darkest
12 blue VTDs in High Point the sort of you know
13 southwestern corner of this map the most heavily
14 Democratic VTDs those are all in district 60 as
15 opposed to the bordering district of 62; right?

16 A Yeah, I mean I think there are obviously a
17 lot of very dark blue districts closer to the town
18 of Greensboro as well but there are several there
19 in district 60, yes.

20 Q In fact all of the dark blue VTDs are in
21 60 and not in 62?

22 A Yes, and if I recall that's the way the
23 court's own expert drew that particular line in,
24 in a previous round of litigation.

25 Q And looking across that boundary at 62,



1 the vast majority of the VTDs there are Republican
2 leaning; right?

3 A Yes. Again that's, that is the way that
4 the special master previously drew it.

5 Q So to the best of your recollection you
6 preserved this line exactly as it had been drawn
7 by the special master?

8 A I think so. And again I know I only moved
9 three or four precincts, and I, I seem to recall
10 it was more district 59 that had the, that changed
11 some because it seems like maybe district 61 and
12 58 had weight, their populations had become too
13 high. So I think 62 is the same but it's possible
14 that one of the precincts there was changed as
15 well.

16 Q And you see how 62 unlike 60 it has some
17 blue VTDs but none of them are as dark as the ones
18 in 60. Is that fair?

19 A Can you ask that again?

20 Q Sure. District 62 you'll see in the
21 southwestern part near you know in High Point and
22 more toward the center of the map there are some
23 blue VTDs there but none of them are as dark blue

24 as those in district 60; right?

25 A None of them are as dark blue as the

↑

Page 168

1 several there in district 60, yeah.

2 Q Right. So 62 does not include any of the
3 most Democratic leaning VTDs in this part of the
4 map?

5 A Well, according to, you know, whatever
6 your data said is here yes I guess that is the
7 case.

8 Q Sure, sure. And kind of the same thing
9 with 59; right? So you see there's very, very
10 heavily Democratic leaning VTDs in District 61 and
11 District 58 but none of those are included in
12 District 59; right?

13 A Yeah. That's generally what the special
14 master did.

15 Q And in fact 59 picks up all of these red
16 VTDs sort of at the northern northeastern part of
17 this map but all of the blue ones in 57 are put
18 into 57; is that right?

19 A Yeah, again, in a based upon what the

20 special master did.

21 Q Mm-hmm. So let's just look at another one
22 of these maps. If you just give me one moment.

23 This is another map Exhibit 10 this is
24 another map from Dr. Cooper's report, map 30.
25 This is showing the enacted House plan all the



Page 169

1 enacted districts for Mecklenburg County. That's
2 showing up on your screen; correct?

3 A Yes.

4 Q Okay. You'd agree that overall this is a
5 really blue looking map that's heavily Democratic
6 just eyeballing it?

7 A I mean I would agree with that in the
8 center of it but not on the, certainly on the
9 northern part or the what appears to be the I
10 guess the southeastern part.

11 Q Well, would you agree that overall for the
12 county I guess there are a lot more blue and
13 especially dark blue VTDs than there are red ones?
14 Is that fair?

15 A I mean that's, yeah I believe that's true.

16 Q And looking at these individuals districts
17 you see how in that in District 92 here in the
18 southeast, or sorry, southwest, there are no
19 Republican leaning VTDs?

20 A Yeah. 92 looks like one of them, one of
21 the districts is not shaded at all. I guess that
22 means it's sort of the 50-50 area, but yes.

23 Q Right. So no red in 92 and similarly no
24 red in 101, no Republican leaning VTDs in 101?

25 A Yeah.

↑

Page 170

1 Q And in fact that's also the case it looks
2 like with 99, 100, 101, 102, 106, 107 and 112.
3 Those seem to all have all Democratic leaning
4 VTDs; is that correct?

5 A Yes, but I mean of course those in the
6 center, Charlotte I mean you can't draw them any
7 other way. The population's so dense there that
8 there's no way to extend it out to try to, if you
9 were trying to touch one of those red areas, it
10 would be very difficult to do.

11 Q Sure. But 1-0 -- am I right that 101 and
12 107 similarly don't have any red VTDs?

13 A That's right, but still those are still
14 getting down to -- I mean Charlotte spreads across
15 most of Mecklenburg County and those are in the
16 City of Charlotte. Both of those are in the City
17 of Charlotte.

18 Q You see there's no boundary between
19 District 100 and 103 kind of in the southwestern
20 part here. Do you see that?

21 A Yes.

22 Q And you see how all of the dark blue VTDs
23 there are in District 100 and 103 has some
24 Democratic leaning VTDs but they're much lighter
25 shaded meaning less Democratic?

↑

Page 171

1 A Yes.

2 Q How were you able to draw that line like
3 that without using any partisan data?

4 A Well, as I said earlier, the Democrats
5 drew most of this map in 2019 and I essentially

6 started with the map that they had again as I did
7 in other parts of the map that I previously talked
8 about I tried to keep some of the, I tried to keep
9 municipalities whole when I could, and if I recall
10 Mint Hill was, is a municipality in that area that
11 had been split in a prior map, and so I unsplit
12 Mint Hill and I'm generally aware that Mint Hill
13 and Matthews are towns that have a lot of, they're
14 common interest, so to speak. I mean they're
15 close together, and so again trying to keep some
16 of the municipalities together and not, not being
17 swapped out or connected to some of the larger
18 cities the resulting map if you keep Mint Hill and
19 Matthews together and basically keep all the
20 other, the Democrats' changes, that's what you get
21 at 103.

22 Q Can you remind me, was this one of the
23 maps where you had a template based on that had
24 been drawn outside the public room?

25 A You know, as I said earlier I, I don't

↑

1 really recall that. If I did, I didn't spend any

2 time or much time looking at it because, again, I,
3 what I do recall is the goal in this map was just
4 go in and make, you had to add one district to
5 basically the grouping the Democrats had drawn in
6 2019 so I just went in and added that district to
7 the grouping and in large part kept everything
8 else the same except for the Matthews Mint Hill
9 change that I just described.

10 Q And just to clarify, was that change what
11 became District 103 there?

12 A Yes. I mean that's where I think that's
13 where Matthews and Mint Hill are located.

14 Q Okay. I'm just going to go to the next
15 one of these. Do you see there what I've marked
16 as Exhibit 11 this is map 37 from the Dr. Cooper's
17 report this is the enacted map and it shows the
18 three districts within Buncombe County?

19 A Yes.

20 Q You see here how well this contains city
21 of Asheville; correct?

22 A Buncombe County does contain the City of
23 Asheville.

24 Q And Asheville's sort of the blue looking
25 Democratic leaning VTDs more toward the center of

1 Buncombe County?

2 A It is near the center of the county.

3 Q Do you see how nearly all of the dark blue
4 VTDs, the most Democratic leaning ones, are
5 divided into two Districts, 114 and 115?

6 A Yeah. Most of them are in those two
7 districts.

8 Q And you see how 116 it does have a couple
9 of Democratic VTDs but it looks like it's a lot
10 more red than 114 or 115. Is that fair?

11 A I mean I would say it looks a lot more red
12 than 114 and it looks it looks more red than 115,
13 but I don't know if I would characterize it as a
14 lot more red.

15 Q Sure. And just going back we were talking
16 about how Asheville here is in the center of the
17 map. From sort of a communities of interest
18 perspective which I know is something you'd
19 mentioned as being important when you're drawing
20 district lines, what was the community of interest
21 reason to put Asheville with the northeastern part

22 of this county as opposed to what was just to the
23 west of it or to the northwest of it?

24 A Well, the map can really be explained by
25 the goal of trying to keep municipalities whole,



Page 174

1 and with Asheville, unlike a lot of other cities
2 in North Carolina, it's just not as large and so
3 it's more easily put into fewer districts than
4 other cities might be and in fact in this map I
5 think almost all of Asheville is included in
6 District 114 and 115. There are I think there are
7 some areas that are maybe annexed areas or, or
8 because of the weird shape of those precincts are
9 maybe outside, but almost all of it is inside
10 those two districts.

11 Now, you know, your question was, you
12 know, why is Asheville, you know, more connected
13 sort of to the north/northeast and in this map
14 really Asheville's connected basically to the
15 eastern side of Buncombe County. If you go back
16 and I, you can see on the video when I started
17 this district, I sort of drew it the other way

18 around. I was trying to keep Asheville, like I
19 said, in this, in this as whole as possible which
20 in this case I was trying to keep it in two
21 districts. It's not possible to keep it in one
22 because of population and it's possible to
23 essentially keep it in two. So I, I had it
24 flipped the other way, and the map that I had
25 drawn previously when I printed out and looked at

↑

Page 175

1 it and it just didn't look very exact to me and so
2 I basically just started from scratch and went
3 back in and drew the map that you see before you
4 for the reasons I just explained.

5 Q Did you discuss that first try with
6 Mr. Reel in one of these strategy sessions?

7 A I don't remember that specifically, but
8 I'm sure that I, I probably did discuss with him,
9 you know it would have been just hey what do you
10 does this look like it's exact to you, that sort
11 of thing.

12 Q So the only thing you discussed was

13 compactness?

14 A Yes. I did not discuss election data nor
15 consult election data and frankly you know looking
16 at this thing now if I had election data and that
17 was my goal, and it looks like I would have done
18 it a little bit differently than what I did.

19 Q Well, explain that. How would you have
20 done it differently?

21 A Well I mean you know you can see it's in
22 district 116 it takes in some of those darker blue
23 areas that are next to the areas you have shaded
24 heavily red, and I, you know, I don't know what
25 the, the total district performance might be, but

↑

Page 176

1 I mean it, you know you can clearly see here there
2 would have been relatively easy changes to be made
3 to make that a more Republican district it appears
4 to me anyway.

5 Q And you just have to remind me, was this
6 one of them where you consulted a concept map
7 between the drawings of your first and second
8 attempt at this district?

9 A You know and as I said earlier I really, I
10 don't remember. I somewhat think not just because
11 I remember going in and drawing it one way and
12 then sort of flipping it around and I would, there
13 was just, there's just there are just three
14 districts there in Buncombe so I just went in and
15 played with it and so I don't recall seeing sort
16 of a concept map for this one.

17 Q But the main goal just to go back to
18 something you said earlier was to try to preserve
19 Asheville in as few districts as you could?

20 A Well, I wanted to keep Asheville as whole
21 as possible which in this case necessitates it
22 being put into two districts.

23 Q I see. Well, moving on to one more of
24 these House maps this is Exhibit 12 this is map 43
25 from Dr. Cooper's report, and this shows



1 Cumberland County. So those Democratic leaning
2 VTDs in the center of this map the ones that are
3 shaded pretty blue, that's the City of

4 Fayetteville; right?

5 A Yes, generally yes.

6 Q And you see how all these dark blue VTDs
7 they're split across four different districts in
8 this map, all four of them I should say 42, 43,
9 44, 45; is that right?

10 A Yeah. I mean they're not split evenly but
11 I mean they're in a literal sense split between
12 those four districts.

13 Q Right. So Fayetteville is split across
14 four districts; right?

15 A Yes.

16 Q And you'll see that District 43, the one
17 at the northeast, it combines the reddest, the
18 most Republican VTDs in Fayetteville with the
19 fainter red ones in more of the eastern part of
20 the county; is that right?

21 A Some of them but not all of them.

22 Q Right to. Almost all of them; right? Do
23 you see maybe there's one Republican VTD in 44 but
24 almost all of them are in 43; is that right?

25 A Almost all of the red in or around

↑

1 Fayetteville are in 43, yes.

2 Q Right. And on the other hand, with the
3 exception of that one VTD we were just discussing
4 42 and 44, those are almost exclusively blue and
5 fairly dark blue at that; right?

6 A Yes.

7 Q You testified that your main goal was to
8 split Asheville as little as possible or to keep
9 it as whole as possible you said?

10 A That's right.

11 Q So what was the goal here of splitting
12 Fayetteville four ways?

13 A Well, this is another map that had been
14 drawn by a special master in prior litigation, and
15 so Cumberland County's been heavily litigated and
16 just as I did in Guilford County I thought it best
17 to make as few changes as possible. I think I've
18 changed two or three precincts from the special
19 master's map, again the court's own special
20 master. I made two or three precinct changes for
21 population purposes because due to population
22 noted they were, they were out of the deviation,
23 the allowable deviation, and those are the only
24 changes that were made.

25 Q Did you at least evaluate whether it be

↑

Page 179

1 possible to split Fayetteville less?

2 A No. I don't think I did because again on
3 that one, you know, because of prior litigation,
4 you know, essentially we, that had been upheld in
5 court and I thought it prudent to simply keep it
6 as similar to the current map as we possibly could
7 so that's what I did.

8 Q And is this one of the ones where you had
9 a concept map for Cumberland County?

10 A No, I don't think that I would have for
11 Cumberland. I don't remember that but I don't
12 think I would have because, again, I know just as
13 in Guilford the goal was just simply to make as
14 few changes as, as reasonably necessary to correct
15 for population.

16 Q But it's possible you don't recall for
17 sure whether you used one of those concept maps?

18 MR. STRACH: Objection. Go ahead.

19 A Yeah. I don't think, I don't think that I

20 did, and I, I only I believe that caveat of maybe
21 just because I, I certainly didn't rely on it
22 enough to where it's in my memory and I know the
23 goal behind drawing Cumberland County the way that
24 I did, but you know I mean I, there's a lot going
25 on in those three weeks and now this has been a

↑

Page 180

1 couple of months ago now and I've slept since then
2 but I don't believe I ever saw any sort of concept
3 map for Cumberland.

4 Q And when you were in the official
5 redistricting room how did you recreate exactly
6 what the special master districts looked like in
7 terms of the specific VTD configurations?

8 A So I would direct central staff again the
9 nonpartisan staff to bring up the current
10 districts and they had an overlay that they could
11 bring up that would bring up the current versions
12 of districts.

13 Q Did you do that same thing for every
14 cluster that or every district or cluster that the
15 special master had drawn in prior litigation?

16 A I think so. I don't remember all the
17 districts the special master drew but I know I did
18 it in Cumberland. I did it in Guilford, did it in
19 Forsyth. The problem I think with Wake, and I,
20 again, I don't remember if Wake was one of the
21 special master districts or not but if it was, the
22 reason that I couldn't do that was that they had
23 two new, Wake had two new House districts so it
24 wasn't going to really be possible to keep those
25 districts very similar.

↑

Page 181

1 Q And to confirm when you were presented
2 with the choice of whether to split a municipality
3 several times like with Fayetteville or to just
4 stick with a special master your choice was the
5 special master district should be preserved?

6 A Yeah, I think that's generally the case
7 across the map.

8 Q Let's move to the congressional map. I
9 think I've taken that exhibit down, right? Okay,
10 great. Just a few preliminary questions on this.

11 You did not draw the enacted congressional map but
12 you sponsored it for consideration in the House;
13 is that right?

14 A That's right.

15 Q And you had drawn or you and I guess you
16 in tandem with another legislator had drawn
17 another congressional map. Was that the one
18 labeled CBA-2; do you recall?

19 A I have no idea what it was labeled. I
20 don't remember the label.

21 Q If I bring it up do you think might be
22 able to recognize it? I'll --

23 A You probably should.

24 Q We'll give it a shot. This is Exhibit 15.
25 This is, you know, the official General Assembly

↑

Page 182

1 version of the map, the congressional map labeled
2 CBA-2, and does this one look familiar to you?

3 A Yes. I think it's the map that I actually
4 drew or I drew most of. As I said earlier,
5 Representative Sarah Stephens finished part of it
6 mainly zeroing out the populations across the map.

7 Q Great. And you testified earlier that
8 despite drawing this map you decided in the end
9 that the map sponsored by the Senate chairs was
10 better?

11 A Yes.

12 Q And is it right that at the House floor
13 vote you refer it to as the best member submitted
14 map that you saw? Does that sound right?

15 A Yes.

16 Q Before the House voted to pass the Senate
17 drawn map on November 4th am I right that you
18 spoke on the floor about how the enacted map
19 complied with the various redistricting criteria?

20 A Are you asking about the congressional map
21 still?

22 Q Yes. I'm asking about the congressional
23 map.

24 A Yes. I said something along those lines.

25 Q And so you're generally familiar with the

↑

1 enacted congressional map and the attributes of

2 all of its districts given that you sponsored it
3 for consideration in the House and spoke on its
4 favor?

5 A Yeah. I'm generally, I have a general
6 understanding of what the congressional map is but
7 in terms of, you know, drilling down on specifics,
8 you know, one of the Senate chairs is going to
9 have more knowledge than I would about many of the
10 specifics. Again, I've spent almost the entire
11 time drawing the state House map because it's so
12 much more time consuming and, you know, I have, I
13 was the only chair in the House and they had three
14 Senate chairs, so, you know, it takes three
15 Senators to do what one House members can do, but
16 even House members have their limits. So you
17 know, essentially they had drawn their
18 congressional map and I, I didn't participate in
19 sort of the day-to-day in drawing that map other
20 than the suggestion that I made to them that they,
21 that they actually accepted which was putting the
22 finger counties together in northeastern North
23 Carolina. Of course I was trying to answer your
24 question as best I can.

25 Q I appreciate that. And to confirm were

1 there any of these strategy sessions with the
2 Senate chairs about the congressional map that
3 ultimately got enacted?

4 A No. I don't think so. No. We, you know,
5 we sort of broke and, and for that two or
6 three-week period when map drawing were open they
7 were downstairs in their room and I was upstairs
8 in my room and, you know, I didn't pay a whole lot
9 of attention to what they were doing during that
10 time other than, you know, I would see things on
11 Twitter from time to time, and they didn't really
12 come up to my committee room either. So we
13 didn't, I don't recall having any strategy
14 sessions with them at all about the congressional
15 map that was ultimately enacted.

16 Q And do you have any knowledge of any of
17 the Senate chairs viewing anything that is similar
18 to what you described as a concept map for any of
19 the congressional districts?

20 A No. I don't have any knowledge of that.

21 Q Okay. So I'd have to ask them. I wanted
22 to hear about a process if there was one similar

23 to what we've been discussing?

24 A I guess they would be the ones to know. I

25 don't know.



Page 185

1 Q Great. So I want to talk about just a few
2 of the particular districts in this congressional
3 map similar to what we've been discussing with the
4 House map so I'm going to pull up Exhibit 14
5 first. All right. You see this PDF it's marked
6 as Exhibit 14. This is map 15 from Dr. Cooper's
7 report. It's the same red-blue shading
8 configuration we've been discussing with the
9 House. This shows just one district but it also
10 shows the bordering district CD 12 and CD 10 and
11 CD 14 this is all from the enacted congressional
12 plan. Is that showing up on your screen?

13 A It is.

14 Q Okay, great. Are you generally familiar
15 with the part of North Carolina referred to as the
16 Piedmont Triad?

17 A Yes. I'm, you know, from the Piedmont

18 area and I've lived in the Piedmont Triad
19 previously.

20 Q And why is it called the Piedmont Triad?

21 A Well, it's in the Piedmont, and it's in
22 the Triad.

23 Q What three cities make up the Piedmont
24 Triad?

25 A Winston, Greensboro and I guess High

↑

Page 186

1 Point.

2 Q So we're seeing those three cities here on
3 the map; right?

4 A Yes.

5 Q And am I right that each of them is in a
6 separate congressional district so Winston-Salem's
7 in CD 12. High Point is in CD 10 and Greensboro
8 in CD 11; is that right?

9 A Sure.

10 Q Looks like most of Greensboro I should say
11 is in CD 11?

12 A Yes.

13 Q And each of those three districts I just

14 named, do you agree that it pairs the city, so for
15 example CD 12 with Winston-Salem with very
16 Republican leaning areas to the west of that city?

17 A I mean according to the shading on your
18 map, yeah, it appears that, you know, again based
19 on whatever data you have sort of here it would be
20 Greensboro with a lot of the red on the map.

21 Q You'd agree that each of these districts
22 10, 11 and 12 just looking at the map based on the
23 shading are overall Republican leaning?

24 A Well, I mean I can't see all of 10 and 12
25 but I, you know, as a general matter, you know,

↑

Page 187

1 they, again using past results which, you know,
2 doesn't promise anything for tomorrow, they
3 probably would be Republican leaning.

4 Q And just looking at this same map, this is
5 splitting Guilford County into three separate
6 districts; right? And CD 11 is one of those
7 districts?

8 A Yes.

9 Q And one of the criteria that you were,
10 that you enacted and that you were hoping to
11 follow is to minimize the number of counties that
12 were split; is that right?

13 A Yes.

14 Q And you recall we discussed the 2016
15 criteria. Those prohibited splitting a county
16 more than two ways; is that right?

17 A I don't think they prohibited it. I think
18 they made it a goal not to split it more than two
19 ways.

20 Q Fair enough. The 2016 criteria made it a
21 goal not to split a county more than two ways but
22 the committees didn't include that this time; is
23 that right?

24 A No. We didn't include that, that
25 particular provision, no.

↑

Page 188

1 Q Right. So if those 2016 criteria were
2 still in place it would not be preferable you
3 would say to use this map that splits Guilford
4 County three different ways; is that correct?

5 A No, I don't think you can say that because
6 again, you know, criteria you've got to look at
7 holistically and if you just look at one
8 particular piece of criteria and say well it
9 doesn't do a job, good job of meeting that
10 criteria, therefore it's a bad map, I don't think
11 that that's how it works. You've got to look at
12 all the criteria and try to harmonize it together.

13 Q If you were drawing the congressional map
14 under those criteria, would you have split
15 Guilford County three ways?

16 MR. STRACH: Objection.

17 A As I said, I think this was the best
18 member submitted map that I have seen, and so I
19 think it's a good map. I submitted it myself
20 basically a copy of what the Senators drafted, and
21 I didn't, I didn't see any others that, that were
22 any better. I don't, I don't even recall if the
23 Democrats submitted one ultimately they may have
24 at the very end. They may have submitted some
25 amendments, but this was -- that's one that I saw.

↑

1 Q You say it's the best one you saw. In
2 fact you drew a map and submitted it we were just
3 looking at it called CBA-2?

4 A Yes.

5 Q Your map didn't split Guilford County
6 three ways, did it?

7 A No, but my map split more counties and
8 split a lot more municipalities across the state
9 and again, you know, looking at the criteria
10 holistically and, you know, not just the City of
11 Greensboro or the County of Guilford and the great
12 folks there, but you know, you have to look across
13 the state to look at, well, how many counties and
14 how many municipalities are we splitting and this
15 map that was enacted split far fewer counties than
16 municipalities in my map.

17 Q So the general goal was to split fewer
18 counties and municipalities, but Guilford isn't
19 the only county that was split two ways, was it?
20 That was also true in Wake and Mecklenburg
21 Counties; right?

22 A Yes.

23 Q So the enacted congressional map split
24 Guilford, Wake and Mecklenburg Counties three ways

25 each?



Page 190

1 A Yes.

2 Q Do you recall whether your map split those
3 counties three ways each or I should say Wake --
4 did you -- did your map split Wake County three
5 different ways?

6 A I don't remember. I'd have to see my map
7 again to, I think it might but I have to look at
8 it.

9 Q Let's take a quick look back at Exhibit
10 15.

11 A Yeah.

12 Q You see Wake County there mostly in
13 District 10 and some in District 9?

14 A Yeah. So I split Mecklenburg three ways
15 in my map.

16 Q Right.

17 A And Wake was split twice.

18 Q What about Wake?

19 A Twice.

20 Q It's split into two districts just to be

21 clear on the terminology; right?

22 A Yes.

23 Q Okay. So your, you preferred the enacted
24 map you said based on municipal splits and county
25 splits but your map only split Wake once, only

↑

Page 191

1 split Guilford once and in fact it looks like
2 Guilford is all almost all within one
3 congressional district within District 8. Is that
4 fair?

5 A Yeah. It's almost all within one just
6 like the enacted plan is all, all within one, but
7 I split more municipalities across the map and
8 more counties than the enacted plan.

9 Q And you said you know you have to look at
10 the criteria holistically but in terms of
11 compliance with the criteria that was in force in
12 2016 about not splitting counties into more than
13 two districts, your map would have done quite a
14 bit better than the enacted map. Is that fair?

15 MR. STRACH: Objection.

16 A No, I don't think it is. I mean you said
17 quite a bit better. Again that was just, if
18 you're asking just about that one criteria which
19 again is not how any of this works you've got to
20 look at all the criteria, but if you if you just
21 look at one piece of criteria, I split one county
22 three ways and they split three counties three
23 ways, and so I, you know, I don't know that I
24 would characterize that as their map being a lot
25 worse just based on that particular criteria

↑

Page 192

1 because again you've got to look at the criteria
2 as a whole.

3 Q And that's helpful. Thank you. Oh I
4 guess one more thing about your map actually.
5 Your map complied with all the other redistricting
6 criteria, right, like population and count
7 traversals things like that that we haven't been
8 discussing?

9 A As far as I know, I think so.

10 Q And it's true that your proposed map
11 didn't pair any incumbents within the same

12 district; is that right?

13 A I again I don't think so but I'd have to
14 see the layer but I don't think it did.

15 Q Sure.

16 A That seems --

17 Q Yeah. No problem.

18 A -- the incumbency layer.

19 Q Sure. Just to confirm I'm going to pull
20 up Exhibit 16 which is the incumbent report from
21 the stat pack for the CBA-2 map we've been
22 discussing?

23 A Yeah.

24 Q So just looking at this stat pack report
25 it looks like every incumbent has his or her own

↑

Page 193

1 district; is that right?

2 A That's right, yeah.

3 Q Okay. And the enacted map, that was not
4 the case; right?

5 A No. I think they double-bunked two
6 members.

7 Q I wanted to go back for a second to just
8 the map that we were looking at of CD 11. This is
9 Exhibit 14.

10 A Yep.

11 Q So you see how this includes most of the
12 City of Greensboro over in that very eastern part
13 of this long district that stretches over to, you
14 know, through Stokes and Surry and Alleghany and
15 Ashe?

16 A Yes.

17 Q And this district includes pretty far
18 western counts. It includes Caldwell and
19 Alexander Counties as well; right?

20 A You know, recognizing that you're not from
21 here, no, I wouldn't characterize that as far
22 western counties. Those are counties in the
23 Piedmont. Now, you know they're, they're not far
24 western, you know, but that's I guess in the eye
25 of the beholder.

↑

1 Q Fair enough. Let me rephrase the
2 question. Those counties are quite far west from

3 the City of Greensboro. Is that fair?

4 A I mean I guess it depends on, you know,
5 what you mean by far. I know that Greensboro from
6 Caldwell County, where I live Greensboro is about
7 an hour and 50 minute drive which as congressional
8 districts goes really not that far.

9 Q Those counties that are in the western
10 part of this congressional district, would you say
11 it's fair to characterize them as, you know,
12 either rural or somewhat mountainous counties
13 generally?

14 A Well, I would characterize Ashe,
15 Alleghany, maybe a little bit of Surry, a little
16 bit of Wilkes as mountainous counties the rest of
17 those counties are not really mountainous.
18 There's, you know, sort of the mountains begin in
19 the northern part of Caldwell there, but most of,
20 you know, people live down not in the mountains
21 there. So I, you know, I know maybe being
22 characterized as something that a bunch of
23 counties that don't have anything in common but
24 you know, I'm from that neck of the woods and, you
25 know, my opinion those counties have quite a bit

1 in common. Those are all very similar counties
2 sort of the northwestern North Carolina. I mean
3 even the northern part of Guilford County is more
4 rural. So I think they do have quite a bit in
5 common.

6 MR. STRACH: Hey, Sam.

7 MR. CALLAHAN: Sure.

8 MR. STRACH: Can I think something of the
9 court reporter? I think she's not on mute, and I
10 think there's sound coming from her computer or
11 something. Jan?

12 THE REPORTER: Yes, sir.

13 MR. STRACH: Would you mind muting because
14 I think I'm hearing something coming from your
15 computer.

16 No. Maybe somebody else is not -- are you
17 around traffic or something, Sam?

18 MR. CALLAHAN: No, I'm not.

19 MR. STRACH: All right. I'm just like
20 hearing like, I don't know whether it's traffic or
21 something in the background. Maybe it's my
22 imagination. Oh, I just -- anybody who's not

23 muted, if you'd please mute. But so thanks, Sam.

24 Sorry about that.

25 MR. CALLAHAN: Oh no. That's okay. If

↑

Page 196

1 it's still happening, please. I thought -- okay.

2 Q So you were just saying that the counties
3 in the western more part of this district you
4 would characterize as having things in common. I
5 guess my question is does Greensboro have more in
6 common with Caldwell County or with the City of
7 High Point?

8 A Well, you know, obviously High Point being
9 so close it would have probably more in common
10 with High Point, but again you know you can't just
11 drill down on one particular city and say, well,
12 you know, we have to meet every single criteria to
13 the max for that one particular city because, you
14 know, it ultimately precludes you from doing that
15 in other areas across the map, and again that's
16 why it's about harmonizing the criteria, and one
17 of the criteria is keeping cities as whole as
18 possible, and Greensboro here was kept very whole.

19 It's only one of two cities across the state that
20 were split, and that's why we're talking about it
21 so much obviously, but it was still kept
22 reasonably whole.

23 Q Right. And it looks like could have been
24 kept pretty much reasonably whole and paired with
25 High Point; is that fair? There's nothing --

↑

Page 197

1 there was no population-based reason that
2 prevented Greensboro and High Point for being
3 placed in the congressional district; right?

4 MR. STRACH: Objection.

5 A You know, it's a better question for the
6 Senate chairs who drew it, but yeah, I mean if you
7 go in there and start drawing that, High Point's
8 got, you know, a relatively larger population than
9 the other parts of that district and it's going
10 to, it's going to very quickly make you have to
11 start changing the other counties throughout that
12 district and not keeping them whole if you put
13 High Point in that district.

14 Q So your position is that if you put
15 Greensboro and High Point together would
16 necessarily require splitting another county?

17 A I think if you're on the current map if
18 you just went in and said, okay, I'm going to
19 extend the line down and put High Point in this
20 district, yeah, you're going to have to change the
21 district. One of the other counties that are kept
22 completely whole throughout that district which
23 they all are essentially other than Guilford
24 County and that little piece of Watauga that's
25 done for incumbency purposes, yeah, you would have

↑

Page 198

1 to start changing the, the lines across the
2 counties.

3 Q Right. So my question was a bit
4 different. If you, you're not testifying that
5 it's impossible to put Greensboro and High Point
6 in the same district without splitting an
7 additional county, are you?

8 A No. It's not impossible.

9 Q Okay. And to your knowledge have

10 Rockingham County and Caldwell County ever been
11 paired together in the same congressional
12 district?

13 A I don't know that they ever have or not.
14 I just don't know the answer to that.

15 Q Have they in your -- you're from Caldwell
16 County; right?

17 A Yes.

18 Q And you don't in your lifetime or your
19 recollection you don't recall them ever being in
20 the same congressional district, do you?

21 A I don't think so, you know not, not that I
22 recall.

23 Q Did something change about the character
24 of the communities or anything like that that
25 warranted putting them in the same congressional

↑

Page 199

1 district?

2 A I think that what changed was the
3 population of North Carolina exploded and we got a
4 14th congressional district and so, you know, all

5 the districts had to change.

6 Q And you already alluded to this a bit but
7 looking over at the western part of the district
8 you see that little chunk you mentioned you
9 thought it was for incumbency purposes that cuts
10 into District 14 in Watauga?

11 A Yeah. That's just a precinct that
12 Virginia Fox lives in.

13 Q Right, right. And as a result of that
14 little carveout, is it true that Representative
15 Fox is now in the same district as the Democratic
16 incumbent from Greensboro Kathy Manning?

17 A I think that's the case, yes.

18 Q And you were aware when you sponsored this
19 map in the House and supported its passage that
20 the map would do that double-bunking; right?

21 A Yes. I mean, you know again, obviously
22 everybody understands, understanding that
23 congressional members don't have to live in their
24 districts, but I understood that the district has
25 grown covered what I understood to be the current

↑

1 residents of both of those members.

2 Q And your proposed map we discussed earlier
3 did not do that double-bunk, did it? It kept
4 every incumbent in his or her own separate
5 district?

6 A Yeah, that's right.

7 Q Can you explain to me what traditional
8 redistricting criterion double-bunking using that
9 little boot-shaped addition served?

10 A Well, I mean again I think you have to
11 look at the map as a whole and what it served is
12 drawing a statewide map, 14 districts across North
13 Carolina that only split two cities Charlotte had
14 to be split, so you can't even count that, and
15 Greensboro that's kept I think 90-some percent
16 whole. You know, however you slice the pie anyone
17 can admit if you sat down in front of Maptitude to
18 try to do that it is very difficult to draw 14
19 congressional districts in North Carolina and only
20 split two cities across the map, and so you know
21 in my opinion that's what the public expects to
22 see. They want to see these cities kept whole as
23 best we can.

24 The counties are kept whole. The number I
25 think is maybe 10 or so counties across that map



1 that are split at all. Very few VTDs across this
2 map precincts, I think the number was like 24, and
3 when you compare that to the past with what both
4 Republicans did and especially Democrats before
5 them they would have thousands of precinct splits
6 across the map. This map has 24 and it keeps all
7 but two cities completely whole, and so I think
8 you have to look at it in a, in a context in a
9 holistic way, and it was, when you, when you put
10 it on the scale in and weighing all of those
11 things I just mentioned and you say but you've got
12 to double-bunk Virginia Fox and Kathy Manning, it
13 was, it was a decision I was willing to make in
14 drawing the map.

15 Q So your position is that it was necessary
16 to double-bunk Virginia Fox and Kathy Manning in
17 order to serve all of those other purposes that
18 you just enumerated?

19 A Well, we didn't have a consultant, we
20 didn't have anybody drawing with a computer

21 algorithm somewhere. So you know, to say was it
22 possible to do it otherwise? I don't know but I
23 didn't have anybody, like I said, it that was a
24 consultant or somebody drawing maps somewhere that
25 could sit down and just do this, you know, using

↑

Page 202

1 some sort of computer algorithm. This was done by
2 the Senate chairs and their committee, excuse me
3 in their committee room and so, you know, in terms
4 of just humans sitting down and drawing a map I
5 don't think it can get a whole lot better in terms
6 of following our criteria than what we have.

7 Q You testified just a moment ago that a lot
8 of these decisions were that were based on the
9 fact that North Carolina has had an explosion of
10 population over the last decade. Is that what you
11 said?

12 A Yeah. I mean I of course I just said that
13 that was one, one explanation for the changes in
14 districts of course.

15 Q Right, right. But so that growth is what
16 led to that 14th congressional seat; is that

17 right?

18 A Yes. That coupled with the, the loss of
19 population in other states.

20 Q Sure. And do you know whether the
21 population that growth that occurred in North
22 Carolina occurred primarily Democratic leaning
23 areas or more in Republican leaning areas?

24 A Well, you know, I don't know the answer to
25 that. I mean I know that, you know, obviously

↑

Page 203

1 Raleigh and Charlottes are the big cities, are
2 bigger, bigger cities, probably they grew more
3 than other areas and as we talked about today and
4 seen on here in general those large cities and
5 their urban cores tend to vote Democratically, so
6 that would be some evidence that those, quote-
7 unquote, Democratic areas grew more.

8 Q And one more thing you testified earlier
9 about is that you thought it was better and you
10 weren't legally required but it was better not to
11 use election data or partisanship in drawing

12 districts. Do you recall that testimony earlier
13 today?

14 A Yes.

15 Q Can you explain to me why you think it's
16 better to not use election data or partisanship
17 when drawing district lines?

18 A Well, I think it's just become a political
19 football and I think that, you know, we've
20 litigated these cases well before my time in the
21 General Assembly and since I've been here it's
22 been nothing but litigation since I've been
23 serving the General Assembly, and I think that
24 the, you know, average member of the public I
25 think they prefer that lines be drawn without

↑

Page 204

1 using election data.

2 Q Do you think it's more fair to the
3 citizens of North Carolina to not use any election
4 data partisan considerations in drawing district
5 maps?

6 MR. STRACH: Objection.

7 A You know, I mean fair is in the eye of the

8 beholder, but what I think is that the average
9 citizen, they want to keep cities and towns whole.
10 They want to keep counties whole. Obviously they
11 want to have districts that have equal population.
12 If you really hone in and focus on those key
13 factors, I think you draw something that makes
14 most, makes sense to most people in the state.

15 Q Thank you, Representative Hall. You know
16 I was hoping to take just a quick break. I think
17 we're close to the end here but I just wanted to
18 grab a glass of water and things. Would you be
19 amenable to maybe a five or ten-minute break?

20 MR. STRACH: That's fine, Sam. We'll be
21 back. We'll be back when you're back.

22 MR. CALLAHAN: Okay. Great. Much
23 appreciated.

24 THE VIDEOGRAPHER: We're going off the
25 record. The time is 2:25 p.m.



1 (A recess was taken.)

2 THE VIDEOGRAPHER: We are back on the

3 record. The time is 2:44 p.m.

4 MR. CALLAHAN: All right. Thank you,
5 Representative Hall, for your time today. No
6 further questions from the Harper plaintiffs.

7 THE WITNESS: Thanks Sam.

8 EXAMINATION BY COUNSEL FOR
9 PLAINTIFF COMMON CAUSE

10 BY MS. RIGGS:

11 Q Good afternoon, Representative Hall. I'm
12 Allison Riggs from the Southern Coalition for
13 Social Justice representing plaintiff Common
14 Cause. Can you hear me okay?

15 A I can hear you well.

16 Q All right great. Nice to meet you.

17 A And you too.

18 Q Representative Hall, you testified in the,
19 in front of the entire House on the House floor
20 that there were no outside consultants that you
21 used at all in any way in the drawing of the House
22 map; is that correct?

23 A I think that's right, yes.

24 Q You spoke with Mr. Callahan a little bit
25 about Mr. Dylan Reel. There is a few follow-up



1 questions I'd like to ask you about him.

2 A Okay.

3 Q Did I understand your testimony that he
4 was general counsel to you as chair of the Rules
5 Committee?

6 A That's right.

7 Q Did he have any formal role in the
8 redistricting process?

9 A Yes. I mean he's just a general counsel
10 for my office.

11 Q Okay. When did you hire Mr. Reel for that
12 role?

13 A Around the time that I became rules chair.
14 So that would have been August of 2020.

15 Q Okay. And was Mr. Reel hired for that
16 role specifically to provide legal advice and
17 strategy in the redistricting process?

18 A Not specifically for that but that, it was
19 for that among other things.

20 Q What was Mr. Reel's background in
21 redistricting?

22 A He had been an intern at the General
23 Assembly before in David Lewis's office who of

24 course was the former chair of the Redistricting
25 Committee.

↑

Page 207

1 Q And when was that?

2 A That would have been, if he came to my
3 office in August of 2020, I think he had been an
4 intern in the Rules Office for a couple of years
5 before that.

6 Q He had been, when you say an intern, does
7 that mean an unpaid role?

8 A No. I think he was paid. He was in law
9 school at the time, and so he wasn't working full
10 time as an intern of course but I think he was
11 being paid for at least part of that time.

12 Q Okay. So your testimony is he worked for
13 Representative Lewis while in law school?

14 A Yes.

15 Q Okay. And do you know when Mr. Reel
16 graduated from law school?

17 A In May of 2020.

18 Q Do you know what kind of training besides

19 working as an intern in Representative Lewis's
20 office that Mr. Reel had in redistricting or
21 election law?

22 A Not sure if he had much more than that. I
23 mean similar to the, to me as the redistricting
24 chair, my experience was, was being a member of
25 the committee when Representative Lewis was the

↑

Page 208

1 chair.

2 Q Okay. Do you know, did Mr. Reel ever
3 attend any NC -- not -- NCSL redistricting
4 training events and do you know -- and NCSL I
5 believe stands for National State Legislatures
6 something -- Council? Committee?

7 A Yeah, I'm familiar with the organization,
8 but I won't try to guess the name either but I
9 don't know if he did or not. He may have but I
10 just simply don't know.

11 Q Okay. Do you know if Mr. Reel ever met
12 independently from you with members of the
13 Republican National Committee staff?

14 A I don't believe that he did. I certainly

15 don't have any knowledge of that, and he would
16 have told me in my opinion he would have told me
17 if he, if he would have done that.

18 Q Why do you believe he would have told you?

19 A Well, Dylan and I, he's the general
20 counsel in my office. You know, in my opinion
21 he's got a duty to me just by virtue of that, but
22 in addition to that we're friends and you know we,
23 he, the Rules Office is very busy and it deals
24 with every single bill in the entire General
25 Assembly there's no way that I can do that by my

↑

Page 209

1 myself. I've got a law practice that I've got to
2 deal with at home, and so he basically ran the
3 office when I was away and we talked very
4 frequently about matters in the Rules Office. I
5 generally would talk to him just about every day
6 especially when we're in session, and I know him,
7 and through that process, and it's my opinion that
8 had he, had he met with the RNC or really any
9 other political consultants he would have told me

10 that.

11 Q Did you ever explicitly ask Mr. Reel if he
12 had met with anyone from the RNC?

13 A No, no. And again I didn't see any reason
14 to do that. I didn't have any evidence that that
15 had happened.

16 Q Did you ever explicitly ask Mr. Reel if he
17 met with anyone from the National Republican
18 Congressional Committee?

19 A Again same answer. No, I didn't ask him
20 that but I didn't have any reason to.

21 Q Okay. Did you ever explicitly ask
22 Mr. Reel whether he met with anyone from the
23 Republican State Leadership Committee about
24 redistricting?

25 A No. Same answer. Didn't ask him that but

↑

Page 210

1 as I said I didn't have any reason to ask him
2 about those things.

3 Q Did you ever explicitly ask Mr. Reel to
4 confirm to you that he never utilized outside
5 consultants in any way in the drawing of the House

6 map?

7 A No, and again same answer. I didn't have
8 any reason to believe that he had done that.

9 Q How did you think he -- strike that.

10 Did Mr. Reel contribute to the drawing of
11 these concept maps that you spoke about with
12 Mr. Callahan?

13 A Yes.

14 Q On what basis did you believe he had the
15 expertise to draw concept maps for the North
16 Carolina state House plan?

17 A Oh, probably the same basis as every other
18 chair of the committee. We're a part-time
19 legislature. I mean there's nobody there who
20 comes into it as some sort of expert in
21 redistricting like many of you folks are who
22 litigate these cases. We have to come into it and
23 learn by doing and, you know, just as I learned by
24 being a member of the committee Dylan had learned
25 some of the some of the rules and how the process

↑

1 works through his work as an intern in the prior
2 chair's office, and then now working of course in
3 my office.

4 Q And you relied on the advice, the legal
5 advice of a gentleman who graduated from law
6 school in 2020 for the drawing of the state House
7 map?

8 A Yes.

9 Q Did you ever explicitly ask Mr. Reel to
10 confirm to you that he never utilized any outside
11 consultants in the drawing of any of the concept
12 maps that he showed you?

13 A No, but again I didn't have any reason to
14 ask him that. So I didn't ask him.

15 Q Same question but applicable to all your
16 staff besides Mr. Reel. Did you explicitly ask
17 your staff to confirm to you that they never used,
18 utilized any outside consultants in the drawing of
19 or support for you in the drawing of state House
20 districts?

21 A And same answer. I had no reason to ask
22 them that. I had no evidence that had happened
23 and I don't believe that happened.

24 Q Did you ever ask any of your staff to
25 explicitly confirm to you that they did not use

1 Dave's Redistricting app?

2 A No, no. I didn't ask them that and as I
3 said earlier I don't know what app was used in the
4 concept maps.

5 Q You didn't ask what app was used in the
6 creation of the concept maps?

7 A No. As I've answered many times I don't
8 know what app it was.

9 Q Why didn't you ask?

10 A I, I didn't think it the really mattered.
11 My staff knew we were not using election data just
12 as I did, and so I saw no election data at all in
13 any of these maps. Again it was in the context of
14 talking to staff about the time constraints that
15 we were under and knowing that we had to get an
16 entire state House map drawn, and you know it was
17 done purely on data that was allowed under our
18 criteria.

19 Q Did Mr. Reel ever show you a concept map
20 or a portion of a concept map on his phone?

21 A Yes I think he at some point did show me

22 that.

23 Q Do you know if he took screenshots of the
24 concept maps on his phone?

25 A I don't know the answer to that.

↑

Page 213

1 Q So you don't know whether he had a program
2 on his phone or if it was a screenshot on his
3 phone when he showed you his phone?

4 A Right.

5 Q Okay. Did Mr. Reel ever show you any maps
6 on his phone while he was in the public terminal
7 room with you?

8 A Yes.

9 Q And when did he show you concept maps in
10 the public terminal room?

11 A Again, it was probably a couple of times.
12 I don't remember the specific dates, and I don't
13 even really remember which districts it were that
14 we were talking about at the time, but again there
15 was no election results or partisan data on any of
16 those maps.

17 Q Did the concept maps that Mr. Reel showed
18 you on his phone inform how you independently drew
19 district lines on the public terminal computer?

20 A I think in a general way it did, but you
21 know not in a really specific way because, you
22 know, I didn't, and it wasn't like I went in and
23 tried to memorize precinct by precinct or tried to
24 you know look at a picture precinct by precinct
25 and turn around and draw it. I just had a general

↑

Page 214

1 concept in mind and you know basically used that
2 to sort of start off whatever given map I was
3 doing and I had to go in and make the tweaks as
4 necessary, but again I, you know, that as I said
5 earlier, I think there were five or fewer concept
6 maps that I ever saw. I think there were only a
7 couple of times that I ever saw any map that he
8 had, you know, in the room.

9 Q So I understood that you testified earlier
10 that you never brought any maps into the public
11 terminal room with you, but it's your testimony
12 now that you did look at maps on Mr. Reel's phone

13 while he was with you in the public terminal room;
14 correct?

15 MR. STRACH: Objection. Go ahead and
16 answer.

17 A And as I said earlier, I didn't bring any
18 maps inside the room, and so the second part of
19 your question, did Mr. Reel, and I've answered
20 that question.

21 Q Mr. Reel no longer works for you; is that
22 correct?

23 A That's right.

24 Q He is now a lobbyist and consultant at
25 McGuire Woods?

↑

Page 215

1 A That's right.

2 Q And he left your office just this month;
3 is that correct?

4 A Yes.

5 Q Do you know when he first began
6 conversations about his intended move to McGuire
7 Woods, a lobbying firm?

8 A No, I don't know a specific date.

9 Q Well, you were friends; right? When did
10 you first find out that he was planning on moving?

11 A I found out -- I would have to go back and
12 look at the calendar. I want to say we were in
13 session, and so that may have been sometime around
14 the, I don't know, the second half of November I
15 think, and so he was he was there for I think
16 several weeks after that roughly till, till mid
17 December.

18 Q You mentioned Neal Inman was involved in
19 reviewing the concept maps. Can you, I'm sorry if
20 I missed this, but can you restate what
21 Mr. Inman's role is specifically to Speaker Moore?

22 A Well, he's a lawyer but he is the -- his
23 title is chief of staff.

24 Q And were there other people from Speaker
25 Moore's staff besides Mr. Inman who reviewed

↑

1 concept maps?

2 A Not that I recall.

3 Q Who do you recall as serving on Speaker

4 Hall's -- sorry. I just promoted you.

5 A Yeah.

6 Q -- Speaker Moore's staff at the time
7 besides Mr. Inman?

8 A If you will ask that one more time.

9 Q Besides Miss -- I just want to go through
10 on who was on Speaker Moore's staff. So besides
11 Mr. Inman who would have qualified as the staff of
12 Speaker Moore?

13 A Well, I mean he has a staff of several I
14 mean more than ten. I don't know how many staff
15 members he has. Not even sure I know all of his
16 staff members.

17 Q Okay. Which ones can you remember?

18 A Just as, you're asking me just purely
19 who's on Speaker Moore's staff that I can name?

20 Q That's right.

21 A Well, you've got Sam Hayes who's the
22 general counsel who I think's on this call or
23 deposition. Just trying to think down the hallway
24 Dan Gurley who I, I think is the assistant chief
25 of staff, deputy chief of staff, Cory Bryson,

1 Britt Bryson, they're policy advisors I think is
2 the title they have. Grace Irvin is the
3 legislative assistant. Then there are, I mean
4 there are probably at least five or six others
5 Beth Friedrich is the, I think her title is the
6 assistant general counsel to the speaker. You
7 know, I'm probably -- well, Chris Pittman who's
8 also a staff member. Trafton Dinwiddie who's also
9 on the speaker staff. Julie Lisella, she handles
10 boards and commissions. You know and I'm sure I'm
11 leaving some out but those are all that I can
12 recall right now.

13 Q That's fine. It's not a memory test. So
14 having gone through those names and maybe
15 refreshed your recollection a bit do you ever
16 recall reviewing concept maps with Dan Gurley?

17 A No, I don't.

18 Q Do you ever remember reviewing concept
19 maps with Cory Bryson?

20 A No.

21 Q Do you ever remember reviewing draft maps
22 with Bren -- and I think you meant Woodcox?

23 A No. No Brent is a -- he's a Senate

24 staffer.

25 Q Oh, he's in the Senate. Sorry.

↑

Page 218

1 A Yeah.

2 Q Do you ever remember reviewing concept
3 maps with Sam Hayes?

4 A I don't think so, no.

5 Q Is it your understanding, who, who
6 ultimately had possession and controlled the
7 concept maps that we've discussed today?

8 A You know, I would -- to the extent anybody
9 you know had possession or control I would say
10 Dylan Reel.

11 Q Do you know, did Dylan, did Mr. Reel ever
12 meet with anyone from Speaker Moore's office to
13 the best of your knowledge?

14 A Yeah. I mean he was the general counsel
15 of the Rules Office. He often met with people
16 from Speaker Moore's office, but I, I mean if you
17 want to clarify it down to a time period or
18 subject.

19 Q During the redistricting process so from

20 August to November, did Mr. Reel ever outside the
21 presence of you meet with members of the staff of
22 Speaker Moore's office?

23 A I don't know that for sure. I don't know.

24 Q Did you ever ask Mr. Reel if he showed the
25 concept maps to members of Speaker Moore's staff?

↑

Page 219

1 A No. I didn't ask him that.

2 Q Did you ever review concept maps for
3 Congress with anyone from Senator Berger's staff?

4 A No.

5 Q Did during the redistricting process so
6 roughly from August through November did Mr. Reel
7 ever show concept maps to any members of Senator
8 Berger's office?

9 A Not that I'm aware of, no.

10 Q Did you ask him if he did?

11 A No, because I had no reason to think that
12 he did that.

13 Q What prevented your partisan -- sorry.
14 Strike that.

15 What presented -- what prevented your
16 staffers from looking at racial or partisan data
17 on Twitter or Dave's Redistricting app at any time
18 and having that affect the concept maps that
19 informed your drawing?

20 A Well, I mean just their understanding that
21 we had adopted criteria not to use those pieces
22 of, of data and they knew that I was careful to
23 stay away from any data like that, for example, I
24 believe you sent me an e-mail at some point that
25 had racial data in it and I didn't read the letter

↑

Page 220

1 because I didn't want to, I didn't want to read
2 any of that data. We went to that sort of extreme
3 limit to try to prevent that sort of data from
4 corrupting the process. And so they knew I was
5 doing that, and again I know my staff and I
6 believe they were doing the same thing.

7 Q Okay. Well, we'll certainly get to that
8 letter. Did you ever issue any warnings to your
9 staff that if they consulted any partisan data
10 outside what was in Maptitude loaded on the

11 General Assembly system that you would fire them?

12 A No. You know again, as I've said I had no
13 reason to do that. They understood we were not
14 using election data.

15 Q So aside from election data did any of
16 your Republican legislative colleagues request
17 specific precincts be moved in and out of their
18 districts?

19 MR. STRACH: Allison, I think we're going
20 to object to that on the basis of legislative
21 privilege. If you're asking about other incumbent
22 members having conversations with Representative
23 Hall about their districts we're going to object
24 and instruct him not to answer that.

25 Q Okay. Representative Hall, did you ever

↑

Page 221

1 make any changes to the maps that you drew, I know
2 you talked about Wayne and Duplin with
3 Mr. Callahan, but did you ever make any changes to
4 the state House map that wasn't of your own
5 initiative?

6 A Well no. I drew every map that was every
7 district in the map except for the one you just
8 discussed.

9 Q And when you say you drew every map, we
10 understand that you mean you also were informed by
11 a concept map that you didn't draw; correct?

12 MR. STRACH: Objection.

13 A Yeah, at limited times I saw a concept map
14 but again it, I didn't go in and copy it. So I
15 drew the maps other than the one that we
16 previously discussed in the Wayne-Duplin grouping.

17 Q But at various times Mr. Reel had a copy
18 of the map on his phone while he sat next to you
19 in the public terminal room; correct?

20 A Like I said a couple of times that
21 happened.

22 Q Do you know who Jim Blaine is?

23 A Yes.

24 Q Was Jim Blaine ever in the legislative
25 building during the redistricting process?

↑

1 A If he was I didn't see him.

2 Q Did you ever meet with him during the
3 legislative sorry the redistricting process?

4 A Yes. I had dinner with him and other
5 folks but not about redistricting.

6 Q So you never -- did you ever speak with
7 Mr. Blaine about redistricting in the period of
8 starting August 1st through the enactment of the
9 House, the redistricting plans in November?

10 A The only time I recall speaking to
11 Mr. Blaine was at dinner and it was at some point
12 during that process, and to the extent we talked
13 about redistricting it would have merely been, you
14 know, how is it going when do you all think you'll
15 be done in that sort of thing. We certainly
16 didn't have any discussions about election data.
17 He didn't give me any advice on how to draw
18 districts, nothing of the sort.

19 Q Representative Hall, if we take a break
20 for you to consult your calendar, can you tell us
21 the date on which this dinner happened?

22 A Maybe.

23 Q Can we take a one minute break for you to
24 do that?

25 MR. STRACH: Want to just look at it right



1 now?

2 A Yeah, just...

3 MR. STRACH: We'll just stay on. Let him
4 look at it.

5 A Okay.

6 Okay. It looks like it was October 12th.

7 Q Who else was at that dinner?

8 A Representative Brendan Jones and a fellow
9 who I don't know who was a friend of
10 Representative Jones I think from Columbus County.
11 As far as I know he wasn't like a political
12 consultant or anything of that nature.

13 Q Are you aware, so besides Representative
14 Jones who was with you at that dinner are you
15 aware of any other members of the North Carolina
16 General Assembly meeting with Mr. Blaine during
17 the redistricting process?

18 A Not to my knowledge.

19 Q Did you meet with anyone who works with
20 Mr. Blaine during the redistricting process?

21 A No.

22 Q Do you know who works with Mr. Blaine at
23 his consulting company now?

24 A I know Ray Martin that's what I was trying
25 to think of you know who all works for him. I

↑

Page 224

1 think Ray Martin does. I don't recall seeing Ray
2 at all through the process, and there is I think
3 they've got some younger guy who works there now
4 who I don't know, I don't know really well. So
5 yeah Zach Almond is his name but I don't recall
6 seeing him or meeting with him at all during this
7 process.

8 Q Okay. Are you aware of any other members
9 of the General Assembly who would have met with
10 Mr. Martin or Mr. Almond during the redistricting
11 process?

12 A Not to my knowledge.

13 Q Have you ever visited the website of
14 Mr. Blaine's consulting company, it's called
15 Differentiators?

16 A Yes, at some point, yes.

17 Q Are you aware that they have posted for

18 lack of a better word blogs about redistricting
19 this cycle?

20 A Yes.

21 Q Did you read those?

22 A I don't know that I read all much them. I
23 don't know how many were there but to my knowledge
24 the only one that I recall seeing during this
25 process was the, there was one about groupings

↑

Page 225

1 which was essentially the same thing, Duke
2 University had put out, but I don't recall reading
3 any other blogs that, that they put out.

4 Q Was there data was there political data on
5 the county groupings that was published on the
6 Differentiator website?

7 A Not that I recall seeing on there.

8 Q But you did read the blog about county
9 groupings about when Duke released its county
10 groupings analysis?

11 A Well, I looked at the groupings just
12 thinking back on when it went out as best I can.

13 I simply looked at the maps that the groupings
14 that they had. I don't know that I read through
15 the whole article as much as I just looked to see
16 looked at the groupings to see you know what those
17 groupings were going to look like.

18 Q But you didn't immediately shut it down if
19 there was political data on that blog, did you?

20 A I don't recall seeing political data on
21 there but again I was pulling it up to look at the
22 grouping maps, not to read an article from Jim
23 Blaine.

24 Q And I know you talked with Mr. Callahan,
25 Callahan a little bit about Buncombe County House

↑

Page 226

1 districts and I just have a few follow-up
2 questions.

3 You worked at a public terminal on
4 district lines for Buncombe House county districts
5 on multiple different dates. Isn't that correct?

6 A I don't know if it was multiple dates or
7 not but I know I had I went, at one point I drew
8 it one way and then I changed it later on so I

9 don't remember if that was on the same date or
10 not.

11 Q All right. So would it refresh your
12 recollection if I told you the first date was
13 October 14th and the second map was on October
14 18th?

15 A Not really but I won't dispute that. I
16 drew two different Buncombe maps.

17 Q Okay. And in between the time that you
18 drew those two different Buncombe maps who, with
19 whom did you have discussions about the Buncombe
20 House districts?

21 A You know, it would have been, if I had
22 discussions about it, and I'm sure I did before we
23 went to go and change it, and this would have been
24 sort of immediately before, it would have been
25 like we met for, if that was the correct time

↑

1 limits you made we wouldn't have been meeting for
2 four days about that. It would have been Dylan
3 Reel and it maybe Neal Inman speaker's office.

4 Q Indicate Lynn can you push pull up the
5 first screenshot from the public terminal when
6 Representative Hall was drawing state House
7 districts in Buncombe County. We've marked this
8 exhibit as Exhibit 34, and I'll represent to you
9 this is the day that you were walking in to draw
10 Buncombe House county districts. We marked it as
11 34 because we weren't sure when the how many
12 exhibits our co-counsel or co-plaintiffs would
13 have, but can you tell me is this you and
14 Mr. Reel?

15 A That appears to be.

16 Q Okay. Katelin, can you pull up the next
17 picture from the Buncombe districts? Okay. We've
18 marked this as Exhibit 35. Representative Hall,
19 is this you and Mr. Reel again in front of a
20 public terminal?

21 A It looks like it, yes.

22 Q Okay. And do you see that Mr. Reel is
23 holding something that appears to be a telephone
24 in his hand?

25 A It looks like we're both looking at our

↑

1 phones.

2 Q Okay. Do you, do you remember what you
3 were looking at on your phones at that point?

4 A I don't but I know that I never had any
5 maps on my phone. So the chances are I was
6 looking at Twitter or Facebook or I was checking
7 my legislative e-mail or my law firm e-mail or my
8 personal e-mail or I was looking at how the stock
9 market was doing or I was reading my local
10 newspaper online, any number of things, and there
11 was a lot of down time in the room and the fact
12 that he and I are sitting there both sort of
13 looking ought our phones leads me to believe we
14 were probably waiting on central staff to load
15 whatever map we were trying to draw on or we were
16 waiting on them to press something.

17 Q You mentioned that Mr. Reel at least more
18 than one occasion showed you one of the concept
19 maps on his phone while you were in the public
20 terminal room. Do you recall if he showed you the
21 concept maps while you were drawing Buncombe
22 County House districts?

23 A You know, as I said earlier, I don't think
24 so. I don't recall specifically, but you know

25 Buncombe's just three districts, and you know the

↑

Page 229

1 challenge there of course is you're trying to keep
2 municipalities as whole as possible. So if the
3 real problem as I testified earlier was the first
4 version that I drew just didn't look right it
5 didn't look very exact and so that was really the,
6 the genesis for going in to change it was just to
7 try to make it a bit more exact and, and I think
8 we did that.

9 Q When you first drew the three districts
10 House districts in Buncombe County, do you
11 remember what corner of the county you started
12 from?

13 A I don't, no.

14 Q Okay. Katelin, can you show the
15 comparison maps.

16 Representative Hall, I'll represent to you
17 that what is marked as Exhibit 36 here is a
18 comparison of the two different maps that you drew
19 at the public terminal for Buncombe County. In

20 the -- do you recognize these maps? Let me, the
21 shapes of the districts that is?

22 A I think your characterization is correct.

23 Q Okay. So Representative Hall, I'll
24 represent to you that the video record from the
25 public terminal would reflect that in the map on

↑

Page 230

1 the left you started drawing the two blue
2 districts first in the southwestern part of the
3 county. Do you recall that?

4 A I don't. As I said earlier, I don't
5 remember which part of the county that I started
6 in. I know -- well, I don't know which one I
7 started with on either of these.

8 Q When you came back and drew the map on the
9 second, so the map on the right, so the second map
10 the enacted version of the Buncombe County,
11 Buncombe County House districts, I'll represent to
12 you that you again started with the blue districts
13 this time on the eastern part of the county. Do
14 you recall that?

15 A No. I don't remember which ones I started

16 with on either of these. I just know that my goal
17 on the second draw was basically to flip it around
18 because it seemed to me that it was going to wind
19 up being more exact and that District 31 sort of
20 wound around the whole county and we were trying
21 to avoid that.

22 Q So sitting here today you don't know why
23 you decided to each time draw the Democratic
24 districts first in the map?

25 A Well, I didn't decide to draw any

↑

Page 231

1 Democratic or Republican districts, but in terms
2 of why I started where I started in the county
3 there was no rhyme or reason to it. It was you
4 have to start somewhere and again if you've ever
5 used Maptitude and sat down and drawing districts
6 you know a lot of times it's easier to start on
7 the outsides of the districts and trying to keep
8 districts looking compact and sort of work inward
9 and so if I started outside that may have been
10 why.

11 Q And does looking at, do looking at these
12 maps refresh your recollection about what the
13 concept maps that you viewed both on Mr. Reel's
14 phone in the public terminal room and in the
15 adjacent office to the public terminal space what
16 the concept map looked like for Buncombe County?

17 A Again, as I've said I don't recall there
18 being a concept map for Buncombe County at all. I
19 can't say for sure that there was not but I don't
20 recall seeing it. Buncombe County was a
21 relatively easier district to draw. It was just a
22 matter of trying to get it as compact as possible.

23 Q Did you check the compactness scores on
24 these, both of these maps?

25 A What I checked just simply the

↑

Page 232

1 visualization compactness test. I mean I didn't
2 actually get out the Reock and all those scores
3 but I just looked at them and they looked more
4 compact to me. District 31 is in the first map
5 just appeared to be too noncompact and it wrapped
6 around the whole county and so I, you know, in

7 attempt to make it look better we drew the map
8 that we drew.

9 Q Why didn't you utilize the Polsby-Popper
10 or Reock test?

11 A I didn't think I needed to. I looked at
12 it and felt like it looked more compact the second
13 time around so I didn't really need to do that.

14 Q All right. Representative Hall, you're an
15 attorney; correct?

16 A Yes.

17 Q Have you read the North Carolina Supreme
18 Court opinions in the Stevenson line of
19 redistricting cases from the 2000s?

20 A I haven't read all of them. They're
21 obviously very long but I have read at least
22 portions of that opinion you know. I don't
23 remember consider myself to be an expert as the
24 attorneys in this deposition might be, but I
25 probably know more than the average person knows

↑

1 about it.

2 Q What do you understand to be the first
3 step in a state legislative redistricting process
4 or the drawing of state legislative districts as
5 compelled by the North Carolina Supreme Court in
6 Stevenson?

7 MR. STRACH: Objection. Calls for a legal
8 opinion but if you can answer it.

9 A Well, I think as the opinion lays it out
10 it says that you first look at, you draw any VRA
11 districts that you have to draw.

12 Q Do you recall that it says any districts
13 compelled by the VRA?

14 A I don't remember that language. I just
15 know as a general matter it says do the VRA
16 districts first.

17 Q And what is your understanding of what a
18 VRA district is?

19 A Well, again my, my understanding is it's a
20 district again not being expert on the matter, and
21 I know you're asking me for a legal conclusion
22 again, but my general understanding is it's a
23 district where there is legally sufficient
24 racially polarized voting.

25 Q And you know I want to understand your

1 understanding of the law. So what do you
2 understand to be legally significant racially
3 polarized voting?

4 MR. STRACH: So Allison, I'm going to
5 instruct him not to answer this. He's not
6 qualified or able to give legal advice to you or
7 opinions about these VRA issues. Obviously they
8 rely on their own outside lawyers to advise them
9 on stuff like that, and so I'm uncomfortable that
10 this is going to lead to disclosure of attorney-
11 client privileged advice and he's also just not
12 qualified to speak to this. So I'm not going to
13 allow, make him sit here and try to give you a
14 treatise on the VRA. That's just not going to
15 happen today.

16 MS. RIGGS: So you understand that he
17 talked about this in public in committee meetings
18 and on the floor; correct?

19 MR. STRACH: If you want to ask him about
20 what he said, that's fine, but we're not going to
21 sit here and provide a treatise on the VRA. Not
22 going to do that.

23 Q Okay. Representative Hall, you
24 represented to members of your committee and to
25 the members of the North Carolina House of



Page 235

1 Representatives that you had complied with the
2 VRA. Please explain what you meant by that when
3 you stated it publicly to the members of your
4 committee and the members of the House.

5 A Well, as I said then and I'll simply
6 repeat what I said at that point, which of course
7 you know, you could go read the transcript on
8 that, but you know essentially it, it was our
9 opinion that due to the Covington case that we
10 believe said there was not sufficient evidence of
11 racially polarized voting in North Carolina that
12 we did not have to use race, but in our criteria
13 as amended, by the way, we amended it to say we
14 would comply with Section 2 of the Voting Rights
15 Act. We made it clear to members I along with
16 other, the other Senate chairs made it clear that
17 if any member had evidence of, of legally

18 significant racially polarized voting that might
19 trigger a VRA issue that they should bring that to
20 us, and that never happened, you know. We had
21 some members just make the conclusory remark that
22 we had to draw VRA districts but no member ever
23 put forth any evidence of that.

24 Q Didn't you in one committee meeting also
25 suggest that members of the public could bring

↑

Page 236

1 that information to you as well?

2 A I don't remember if I did that or not.

3 Q All right. Well, we may pull that up to
4 confirm that, but what in, as the chair of the
5 Redistricting Committee what would have been
6 sufficient evidence to you to have drawn a VRA
7 district?

8 A I would not have made that decision on my
9 own. If anybody sent me that sort of analysis I
10 would have forwarded it on to the attorneys
11 representing the legislative defendants and asked
12 them for an opinion on what we should do.

13 Q Okay. Well, that brings me -- well, first

14 before I go to the letter, did you read the
15 Covington opinion?

16 A I have read part of it but it's been some
17 time, so it's been long enough to where I, I
18 don't, I haven't read it in a meaningful way to be
19 able to sit here and talk to you about it today.

20 Q Do you know what data informed the
21 racially polarized voting analysis in the
22 Covington case?

23 A I assume data from the Census Bureau.

24 Q Do you understand that a racially
25 polarized voting analysis involves looking at both

↑

Page 237

1 race data and election data?

2 A I am not an expert on racially polarized
3 voting analysis, so I don't know. I've told you
4 just about the extent of my knowledge on the
5 analysis of whether a VRA district's required or
6 not.

7 Q Okay. Well, would it surprise you to know
8 that the only statewide elections analyzed by

9 legislative defendants' experts in the Covington
10 case reviewed by the Covington court were from
11 2004 and 2008?

12 MR. STRACH: Objection. Answer it if you
13 can.

14 A Would it surprise me? No it wouldn't
15 surprise me because I don't have a frame of
16 reference to know what data specifically should be
17 looked at. My guess is it's not clear in the law
18 which data should be specifically looked at but I
19 don't know that so I don't, I can't say that would
20 surprise me.

21 Q Okay. But you'd agree with me, wouldn't
22 you, that that's not recent data; right?

23 MR. STRACH: Objection.

24 A No, I wouldn't. I mean I think recent's
25 in the eye of the beholder. I don't know what in

↑

Page 238

1 terms of the case law on those matters what recent
2 is.

3 Q What is your definition of recent?

4 A I don't think it matters because I'm not

5 making a Supreme Court decisions or Federal
6 Appellate Court decisions, so I, you know, in the
7 context of -- it depends on, and if you ask me
8 virtually it depends on what context you ask me
9 in, but if you ask me for a legal conclusion of
10 recent, I think you just need to consult the case
11 law.

12 Q You'd agree with me, wouldn't you, that
13 you couldn't use 2010 census data in doing, in
14 engaging in decennial census, decennial
15 redistricting in 2021; correct?

16 A No, I wouldn't agree with that at all.

17 Q You wouldn't agree that you need to use
18 2020 census data?

19 A Well, you said you couldn't use 2010 data,
20 and no, I wouldn't agree with that. Again we're
21 talking about legal conclusions here and I, you
22 know, as I said, I don't know the answer to what
23 the cases say about that.

24 Q Okay. Apologize for double negatives.

25 You used 2020 census data in the 2021



1 redistricting process; correct?

2 A No. We used the we used the 2020 census
3 data in the redistricting process.

4 Q Sorry. I thought that was what I said.
5 You used the 2020 census data in the 2021
6 redistricting process; correct?

7 A That's right, but of course we did not
8 consider racial data from any time period.

9 Q Katelin, if you can find it while I'm
10 we're talking in my notes I remember that it was
11 the August 12th committee meeting where
12 Representative Hall talked about accepting
13 information from the public about Section 2 cases.
14 So maybe you can bring that up to refresh his
15 recollection in a minute, but first let me show
16 you a letter that SCSJ sent to you. Katelin, can
17 you put that up first?

18 Representative Hall, I'm going to let
19 Katelin scroll through this document. First is
20 the cover e-mail. You can go probably a little
21 faster.

22 Do you, do you recall receiving this
23 letter, Representative Hall?

24 A I think that's the letter that I

25 referenced earlier, yes.

↑

Page 240

1 Q Okay. And let's go back to the e-mail
2 transmittal cover. Towards the top that's your
3 e-mail address in the -- trying to find what line
4 it is -- if you can highlight it,
5 Destin.hall@ncleg.gov?

6 A That's mine.

7 Q Okay. So you received this e-mail; is
8 that correct?

9 A Yes.

10 Q Okay. And what did you do with this
11 letter upon receiving it?

12 A Well, I got it via the e-mail of course
13 and so when I, I looked at it and I think I opened
14 the attachment and in one of the first few lines I
15 think it became clear that you had included racial
16 data, so I immediately closed it and, and I didn't
17 read the rest of it.

18 Q Did you forward it to anyone?

19 A I don't think so.

20 Q Did you discuss it with anyone?

21 MR. STRACH: You can answer that to the
22 extent that you don't discuss any conversations
23 with counsel.

24 A No.

25 Q I don't want you to reveal the

↑

Page 241

1 conversations with counsel, but did you discuss it
2 with counsel?

3 MR. STRACH: Okay. You can --

4 A Yes.

5 Q Do you remember when you had those
6 conversations? Again don't tell me what they
7 were.

8 A It would have been right around the time
9 that the e-mail was sent.

10 Q Do you know, did Mr. Reel receive a copy
11 of this?

12 A I don't know if he's listed on there or
13 not but and so I don't know if he subsequently got
14 a copy of it.

15 Q Representative Hall, not having read the

16 letter but having invited information about
17 potential Voting Rights Act districts required,
18 how would you have liked to have received evidence
19 to induce you to examine whether or not VRA
20 districts were required?

21 A Well, you know, I think it goes without
22 saying, yeah, you obviously know that you often
23 represent plaintiffs in these cases and so right
24 off the bat when I see you send me an e-mail in a
25 redistricting case nothing against you personally

↑

Page 242

1 but I think would you do the same thing if you
2 were in my shoes you're going to steer clear of
3 that, and so that's, again, not against you
4 personally, but it's not your advice that I'm
5 going to take on those issues, but you know, one
6 of the methods that, that we would have preferred
7 if Representative Robert Reives said come to me
8 and said look, here's the analysis we've got to go
9 through or Senator Blue had come to me and said
10 this, you know, that would have been the starting
11 point. Obviously counsel for both sides would

12 have to be involved with that but you know the,
13 the person who I expected to be the plaintiffs'
14 lawyer suing me would not be the person that I
15 would expect to receive such things from.

16 Q Do you understand that if Representative
17 Reives or Senator Blue had come to you to talk
18 about a VRA district it would have by necessity
19 required a discussion of racial data and political
20 data?

21 MR. STRACH: Objection.

22 A Yeah again, I, you know, I'm not an expert
23 on, on the VRA, you know, that's why we have
24 attorneys representing us.

25 Q Katelin, were you able to find the August

↑

Page 243

1 12th committee hearing?

2 Okay. Representative Hall, I'll represent
3 to you that this is an August 12th committee
4 meeting and you are responding to Representative
5 Hawkins on how you determined whether black voters
6 were packed or not, and Katelin, can you highlight

7 the part about accepting information from the
8 public starts on line 13?

9 Representative Hall, does that refresh
10 your recollection about what you said publicly?

11 A Not really but I have no reason to doubt
12 that transcript. I probably did say that.

13 Q Okay. And do you know if I am a North
14 Carolina voter?

15 A I don't know that.

16 Q I'll represent to you that I am and the
17 letter, as I understood you just testified you
18 shut down that letter the second you saw racial
19 data involved in it; correct?

20 A Yes, I did, and again you know, and
21 obviously as you know it's not anything against
22 you personally. I don't know you personally but I
23 did know and expect that you were going to be a
24 plaintiffs' lawyer, and I don't believe you have
25 the best interests of my viewpoint on these

↑

1 matters because obviously you're on the other
2 side, and that's fair. So you know that received

3 going to be taken in a little bit different light
4 than it might be if it came from one of the
5 members, and the other thing I'll say is no member
6 ever took any initiative on this as far as I'm
7 aware. I think some members maybe in committee
8 discussions they probably mentioned it but the
9 Democratic party in the state has a bunch of money
10 and they could have taken whatever time to do the
11 analysis they wanted to do. They didn't do that.
12 I can't tell you why they didn't do it but they
13 never did any sort of analysis whatsoever. They
14 never asked the nonpartisan staff of the General
15 Assembly to do such an analysis whatsoever and so
16 I don't know why they didn't do that.

17 Q Representative --

18 A I'm sorry. Go ahead.

19 Q Sorry to interrupt. Representative Hall,
20 Senator Blue had asked nonpartisan legislative
21 staff to look at racial data for a racially
22 polarized voting analysis. Isn't it true that you
23 would have instructed them that that violated the
24 criteria you set forth for this redistricting
25 process?



1 A I don't think that's the case, and you
2 know part of it is at the General Assembly the
3 nonpartisan staff doesn't work for one side or the
4 other and so if a member asked a nonpartisan staff
5 member to do something that unless it's illegal or
6 unethical or outside of their power to do, they'll
7 do that, and it's my understanding had they asked
8 nonpartisan staff to do that then they probably
9 would if it's within their capability and I don't
10 know if it is or not, but I know they are, the
11 Democratic party certainly has the ability to go
12 do that if they want to and none of those folks
13 chose to do that.

14 Q So despite repeated exhortations that,
15 that racial data and electoral data were
16 prohibited for use in this redistricting process
17 it is your testimony now that other members in the
18 legislature were supposed to know that they could
19 go to nonpartisan staff and request that which you
20 expressly prohibited?

21 MR. STRACH: Objection. That's not what
22 he said. Answer the question.

23 A Again, I think it's to the extent I'm
24 answering what I, what I said Senator Blue,
25 Representative Reives any many members of the

↑

Page 246

1 Democratic party who are very smart folks and have
2 been there for some time they know what they can
3 and can't do with staff, and you know, whether,
4 whether staff, whether they asked them or not I
5 don't know and I'm not aware that they did that,
6 but again our criteria allowed for us to comply
7 with the Voting Rights Act and that was for a
8 reason and the reason was in case members put
9 forth evidence that we needed to draw VRA
10 districts, and nobody ever put forth any evidence
11 that we needed VRA districts and nobody to my
12 knowledge ever put forth an actual proposed VRA
13 district.

14 Q You never did any analysis yourself to
15 ensure that no VRA districts were required isn't
16 that correct?

17 MR. STRACH: Objection.

18 A Well, I mean again to the extent you're

19 asking me to make a legal conclusion I'm not going
20 to do that, but I'll just say what gave me the
21 decision to do to draw the way we I did was
22 informed by former cases I was informed by
23 Covington case. I was informed by Common Cause
24 case in most instances where we didn't use racial
25 data at all, and those were upheld.

↑

Page 247

1 Q That wasn't my question. Representative
2 Hall, you, you did not perform any type of
3 analysis to determine whether current racially
4 polarized voting patterns and demographic racial
5 demographic patterns required the drawing of any
6 districts compelled by the Voting Rights Act.
7 Isn't that correct?

8 A My --

9 MR. STRACH: I'm sorry. Objection. Go
10 ahead.

11 A My analysis, analysis was just as I
12 described.

13 Q The old court cases?

14 MR. STRACH: Objection.

15 A Yes.

16 Q And that's it?

17 A You know, again, I without going into
18 legal conclusion, with legal conclusions yes, or
19 breaching any sort of privy may have, that's it.

20 Q And you acknowledged though in that
21 committee meeting that my colleague just had up
22 that the decision on whether or not a VRA district
23 was required might require racial data; correct?
24 Do you need me to put that back up?

25 A Again I'm not going to make a legal

↑

Page 248

1 conclusion. I'm not an expert on VRA. I don't
2 know all the requirements.

3 Q Okay. You stated -- Katelin, can you
4 scroll up so that we can see that this is
5 Represent -- Chairman Hall speaking? Chairman
6 Hall, you would agree with me that you said in
7 this October -- sorry -- August 12th committee
8 meeting that members of the committee and members
9 of the public are welcome to gather whatever

10 evidence and put forth evidence that might fall
11 under Section 2 of the Voting Rights Act that that
12 may require some use of racial data. Did I read
13 your public statement correctly?

14 A Yeah, which is in line with what I just
15 said, that it may require it. I don't know
16 whether it does or not. I'm not an expert on VRA.

17 Q And your testimony was that you did not
18 look at the letter sent by Southern Coalition for
19 Social Justice because you saw that there was
20 racial data in there?

21 A I didn't see the racial data. I remember
22 seeing something towards the beginning of the
23 letter that led me to believe there was going to
24 be racial data in that letter and so I closed it.

25 MS. RIGGS: Okay. I have no further

↑

Page 249

1 questions. Thank you for your time Representative
2 Hall.

3 THE WITNESS: Thank you.

4 EXAMINATION BY COUNSEL FOR PLAINTIFF

5 NORTH CAROLINA LEAGUE OF CONSERVATION VOTERS

6 BY MS. MITTAL:

7 Q Good afternoon. My name is Urja Mittal
8 and I'm here on behalf of the North Carolina
9 League of Conservation Voters. I have just one
10 follow-up question, if that's all right, following
11 up on Miss Riggs.

12 You explained that you have the, you made
13 a decision not to consider racial data in the 2021
14 redistricting process for all the reasons you just
15 set forth. Did you think that that decision was a
16 good idea, and if so, why?

17 MR. STRACH: Objection.

18 A Again, I don't have anything to add to
19 what I previously said because I think in large
20 part it's a legal conclusion and to this date I'm
21 not aware that anyone's put forth any evidence
22 that this map did not, did not comply with Section
23 2 of the Voting Rights Act, so at this point, yes,
24 I think that was a good idea.

25 MS. MITTAL: All right. Thank you.

↑

1 That's all.

2 THE WITNESS: Thank you.

3 MR. STRACH: I think that covers all the
4 plaintiffs' groups, and we don't have any further
5 questions. So Sam, do you agree with me that the
6 deposition is now over?

7 MR. CALLAHAN: From my perspective it is
8 over.

9 MR. STRACH: All right. Well, Mr. Court
10 reporter, or madam court reporter, or technician,
11 if you can close this out and we'll --

12 THE VIDEOGRAPHER: Stand by. This marks
13 the end of the deposition of Representative Destin
14 Hall. We are going off the record at 3:44 p.m.

15 THE REPORTER: Counsel, I will take
16 transcript orders now, please.

17 MR. STRACH: Yeah. We'll take it however
18 expedited rough you can get. We've got deadlines
19 at the end of the week, so the quicker the better
20 and we'll take one.

21 THE REPORTER: Okay. Would you like a
22 rough draft later today and then final transcript
23 by the end of this week? Is that what I'm
24 hearing?

25 MR. STRACH: Yeah, if it's even possible



1 to get it even earlier this week. We have some
2 findings due on Friday this week, so I know that's
3 probably rough but, you know, to whatever extent
4 you can get us something earlier than Friday we
5 would appreciate.

6 THE REPORTER: Is Thursday morning
7 sufficient?

8 MR. STRACH: Yeah. We can live with that
9 if we get a rough today.

10 MR. CALLAHAN: We would ask the same for
11 the Harper plaintiffs, a rough later today and a
12 final by Thursday morning, if that's at all
13 possible.

14 THE REPORTER: That's fine. And other
15 counsel, Ms. Mittal and -- I don't see her now --
16 Ms. Riggs, are you all -- you're nodding, but I
17 don't know what that means.

18 MS. KAISER: Yes, Miss Hamilton. We would
19 also like the same as the Harper plaintiffs as
20 well as the legislative defendants.

21 MS. MITTAL: And us as well. Thank you.

22 (Off the record at 3:47 p.m.)

23

24

25

EXHIBIT E

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426
21 CVS 500085

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

REBECCA HARPER, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

**LEGISLATIVE DEFENDANTS’ OBJECTIONS AND RESPONSES TO PLAINTIFFS’
SECOND SET OF INTERROGATORIES**

Defendants Representative Destin Hall, Senator Ralph E. Hise, Jr., Speaker of the North Carolina House Timothy R. Moore, and President Pro Tem of the North Carolina Senate, Philip E. Berger, Senator Warren Daniel, and Senator Paul Newton (“Defendants”), by and through undersigned counsel, serve their objections and responses to Plaintiffs’ Second Set of Interrogatories as follows:

GENERAL OBJECTIONS

Defendants make the following answers, responses, and objections to Plaintiffs’ Second Set of Interrogatories (“Interrogatories”). Each of the following responses is made subject to any and all objections as to competence, relevance, or other grounds that would require exclusion of such statement if made by a witness present and testifying in court. Any and all such objections and grounds are expressly reserved and may be interposed at the time of trial.

The responses are based on Defendants’ present knowledge, information, and belief, as derived from (a) the knowledge and information of present employees or agents of Defendants gained in their capacity as such and (b) a review of the documents and materials maintained by Defendants that would be likely to contain the information called for by the Interrogatories. These responses are subject to amendment and supplementation as Defendants acquire additional information and complete their review and analysis and made without prejudice to Defendants’ right to use subsequently discovered or developed information. Defendants state that their responses to the Interrogatories were prepared in consultation with their attorneys and may not exactly match the words or phrases that may be used by individuals in the course of this litigation to describe events, policies, and practices discussed herein.

No incidental or implied admissions are intended by these responses. The fact that Defendants respond or object to any Interrogatory should not be taken as an admission that Defendants accept or admit the existence of any facts assumed by such Interrogatory or that such Response or objection constitutes admissible evidence as to any such assumed facts. The fact that Defendants respond to part of or all of any Interrogatory is not intended to be, and shall not be, construed as, a waiver by Defendants of any part of any objection to any Interrogatory.

Defendants will respond to Plaintiffs' Document requests in accordance with Rules 26 and 33 of the North Carolina Rules of Civil Procedure and will not provide responses or documents to the extent such responses or production would exceed the requirements of those Rules. Defendants only respond to these discovery requests with information or documents in their possession, custody or control.

Since the North Carolina Rules of Civil Procedure prohibit discovery of privileged matters, Defendants have attempted to interpret each Document Request to call for discoverable matter only. To the extent any response or produced document contains or refers to matters otherwise protected from discovery by the work product doctrine, the attorney-client privilege, or the legislative privilege, no waiver is intended; nor is any waiver intended as to any other matters that are or may be subject to such protection or otherwise privileged.

These responses are provided solely for the purpose of and in relation to this action

Responses and Objections to Specific Interrogatories

1. Identify by 5 p.m. on December 23, 2021, each person who, to your knowledge took part in the drawing of the 2021 Plans, including each person who had any involvement in (a) the development, formulation, discussion, consideration, review, drawing, revision, negotiation, and/or adoption of the 2021 Plans and/or the 2021 Plans Criteria; (b) assisting Legislative Defendants, directly or indirectly, in conducting any of the activities described in subsection (a); or (c) providing input, directly or indirectly to any Legislative Defendant, to their staff, or to employees of the General Assembly on the 2021 Plans and/or the 2021 Plans Criteria. This request covers individuals including, but not limited to, legislative staff members and contractors, legal counsel, members of political organizations, and outside consultants of any kind, including outside political consultants or outside mapmakers:

RESPONSE: Defendants object to this interrogatory to the extent it calls for the production of information protected by the attorney-client privilege, legislative privilege, or the work-product doctrine.¹ Defendants further object on the grounds that this request seeks information beyond Defendants’ knowledge. Legislators could have spoken to staff members, other legislators, or members of the public without the knowledge of Defendants. Subject to and without waiving these objections, Legislative Defendants identify:

Rep. Destin Hall	Rep. William Richardson	Rep. Jason Saine
Rep. John Torbett	Rep. Jay Adams	Rep. Cecil Brockmam
Rep. Becky Carney	Rep. Linda Cooper-Suggs	Rep. Jimmy Dixon
Rep. Jon Hardister	Rep. Pricey Harrison	Rep. Kelly Hastings
Rep. Zack Hawkins	Rep. Brenden Jones	Rep. Grey Mills
Rep. Robert Reives	Rep. David Rogers	Rep. John Szoka
Rep. Harry Warren	Rep. Lee Zachary	Sen. Ralph Hise
Sen. Warren Daniel	Sen. Paul Newton	Sen. Dan Blue
Sen. Jay Chaudhuri	Sen. Ben Clark	Sen. Don Davis
Sen. Chuck Edwards	Sen. Carl Ford	Sen. Kathy Harrington
Sen. Brent Jackson	Sen. Joyce Krawiec	Sen. Paul Lowe
Sen. Natasha Marcus	Sen. Natalie Murdock	Sen. Wiley Nickel
Sen. Jim Perry	Sen. Bill Rabon	Sen. Gladys Robinson

¹ Defendants have not withheld any information in response to this Interrogatory on the basis of these objections.

Legislative Defendants further identify all members of the General Assembly who voted on the Redistricting bills. The roll calls are publicly available on the General Assembly Website.

Legislative Defendants further identify the following staff members and third parties:

- **All individuals who spoke at public hearings**
- **Neal Inman**
- **Brian Fork**
- **Joshua Yost**
- **Sam Hayes**
- **Brent Woodcox**
- **Dylan Reel**
- **Nathan Babcock**
- **Jonathan Mattingly**
- **Attorneys at Nelson Mullins and Baker Hostetler provided legal advice in connection with the 2021 redistricting.**
- **Non-Partisan Central Staff Members**

2. Identify, by 5 p.m. pm December 23, 2021, all documents or data relied upon or otherwise considered by any Legislative Defendant or by any person identified in response to Interrogatory No. 1 above in connection with the creation of the 2021 Plans, including but not limited to draft redistricting plans (whether partial or complete), analysis of or relating to the 2021 Plans or drafts thereof, election or other partisan data, racial data, or any other data.

RESPONSE: Defendants object to this interrogatory to the extent it calls for the production of information protected by the attorney-client privilege, legislative privilege, or the work-product doctrine.² Defendants further object that this request is duplicative of Request for Production of Document No. 1. Subject to and without waiving these objections, Defendants state that no partisan or racial data was used or relied upon by Defendants. Defendants cannot speak for Dr. Mattingly, or the other third parties identified above. Defendants further state that they relied upon Dr. Mattingly’s county groupings, which are publicly available, the 2020 census data (excluding any racial or political data), and incumbent addresses (which have already been produced to Counsel). Defendants also consulted publicly available remedial maps, and court opinions, including the special master reports of Nathan Persily drafted in *Covington v. North Carolina*. As a further response, Defendants refer Plaintiffs to Defendants’ Objections and Responses to Request for Production of Document No. 1.

Defendant Hall states that during the truncated map-drawing period he relied on a staff member, Mr. Dylan Reel, to help prepare draft concept maps to develop options for a limited number of districts in a limited number of county groupings while complying with redistricting criteria. Defendant Hall would sometimes review these concept maps while drawing plans but the concept maps did not dictate map drawing and often Defendant Hall ignored them altogether. Defendant Hall and Mr. Reel did not use any racial or political data in preparing these concept maps. Neither Defendant Hall nor the

² Given the broad sweep of this Interrogatory it could conceivably cover documents created or prepared by attorneys containing legal analysis or documents otherwise covered by legislative privilege. However, Defendants have not to their knowledge withheld any documents or data based on these objections.

other Legislative Defendants have copies of these concept maps or any information or data related to such maps.

Submitted, this the 28th day of December, 2021.

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com
Thomas A. Farr (NC Bar No. 10871)
tom.farr@nelsonmullins.com
Alyssa M. Riggins (NC Bar No. 52366)
alyssa.riggins@nelsonmullins.com
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 329-3800

BAKER HOSTETLER LLP
Mark E. Braden* (DC Bar No. 419915)
MBraden@bakerlaw.com
Katherine McKnight* (VA Bar No. 81482)
kmcknight@bakerlaw.com
1050 Connecticut Ave NW, Suite 1100 Washington
DC 20036
* Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

It is hereby certified that on this the 28th day of December, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com
*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
*Counsel for Plaintiffs Rebecca Harper, et
al.*

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
*Counsel for the North Carolina State Board
of Elections; Damon Circosta, Stella
Anderson, Jeff Carmon III, Stacy Eggers IV,
and Tommy Tucker, in their official
capacities with the State Board of Elections*

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
Mitchellbrown@scsj.org
Katelin@scsj.org

J. Tom Boer
Olivia T. Molodanof
Hogan Lovells US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com
Counsel for Intervenor Common Cause

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com

EXHIBIT F

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426
21 CVS 500085

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

REBECCA HARPER, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

**LEGISLATIVE DEFENDANTS’ OBJECTIONS AND RESPONSES TO PLAINTIFFS’
SECOND SET OF RFP’S**

Defendants Representative Destin Hall, Senator Ralph E. Hise, Jr., Speaker of the North Carolina House Timothy R. Moore, and President Pro Tem of the North Carolina Senate, Philip E. Berger, Senator Warren Daniel, and Senator Paul Newton (“Defendants”), by and through undersigned counsel, serve their objections and responses to Plaintiffs’ Second Requests for Production of Documents as follows:

GENERAL OBJECTIONS

Defendants make the following answers, responses, and objections to Plaintiffs’ Second Requests for Production of Documents (“Document Requests”). Each of the following responses is made subject to any and all objections as to competence, relevance, or other grounds that would require exclusion of such statement if made by a witness present and testifying in court. Any and all such objections and grounds are expressly reserved and may be interposed at the time of the trial.

The responses are based on Defendants’ present knowledge, information, and belief, as derived from (a) the knowledge and information of present employees or agents of Defendants gained in their capacity as such and (b) a review of the documents and materials maintained by Defendants that would be likely to contain the information called for by the Document Requests. These responses are subject to amendment and supplementation as Defendants acquire additional information and completes their review and analysis and made without prejudice to Defendants’ right to use subsequently discovered or developed information. Defendants state that their responses to the Document Requests were prepared in consultation with their attorneys and may not exactly match the words or phrases that may be used by individuals in the course of this litigation to describe events, policies, and practices discussed herein.

No incidental or implied admissions are intended by these responses. The fact that Defendants respond or object to any Document Request should not be taken as an admission that Defendants accept or admit the existence of any facts assumed by such Document Request or that such Response or objection constitutes admissible evidence as to any such assumed

facts. The fact that Defendants respond to part of or all of any Document Request is not intended to be, and shall not be, construed as, a waiver by Defendants of any part of any objection to any Document Request.

Defendants will respond to Plaintiffs' Document requests in accordance with Rules 26 and 34 of the North Carolina Rules of Civil Procedure and will not provide responses or documents to the extent such responses or production would exceed the requirements of those Rules. Defendants further object that under the North Carolina Rules of Civil Procedure, these requests are premature, as no discovery is permitted until a Rule 26(f) conference has been conducted. Defendants only respond to these discovery requests with information or documents in their possession, custody or control.

Since the North Carolina Rules of Civil Procedure prohibit discovery of privileged matters, Defendants have attempted to interpret each Document Request to call for discoverable matter only. To the extent any response or produced document contains or refers to matters otherwise protected from discovery by the work product doctrine, the attorney-client privilege, or the legislative privilege, no waiver is intended; nor is any waiver intended as to any other matters that are or may be subject to such protection or otherwise privileged.

These responses are provided solely for the purpose of and in relation to this action.

Objections and Responses to Specific Requests

1. Produce, by 5 p.m. on December 23, 2021, all documents and data identified in your response to *Harper* Plaintiffs' Interrogatory No. 2 to Legislative Defendants, served on December 21, 2021.

RESPONSE: Defendants object to this Document Request to the extent it requests documents protected by the attorney-client privilege, work product doctrine, or legislative privilege.¹ Defendants further object that this request is duplicative of Interrogatory No. 2. Subject to and without waiving this objection, Defendants refer Plaintiffs to the following publicly available documents/data:

- **Meeting Minutes and Documents found at:**
<https://www.ncleg.gov/Committees/CommitteeInfo/HouseStanding/182#Documents>
- **Meeting Minutes and Documents found at:**
<https://www.ncleg.gov/Committees/CommitteeInfo/SenateStanding/154#Documents>
- **Reports, Maps, Shapefiles, and Block Assignment files found at:**
<https://www.ncleg.gov/redistricting/>
- **Committee Hearings and videos of map drawing sessions found at:**
<https://www.youtube.com/channel/UCxkfibwax95Q0ORobYVWaOA/videos>
- **Dr. Persily’s Special Master Report and accompanying data found at:**
<https://www.ncleg.gov/Redistricting/SpecialMasterReport2017>
- **2020 Census Data (excluding any racial or political data).**
- **The Incumbent Address file already produced to counsel.**
- **Dr. Mattingly’s County Groupings, publicly available, or equally available to Plaintiffs via their expert witness.**
- **Adopted Amendments submitted by Sen. Marcus and Sen. Clark; produced contemporaneously with these responses.**

Submitted, this the 28th day of December, 2021.

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com
Thomas A. Farr (NC Bar No. 10871)
tom.farr@nelsonmullins.com
Alyssa M. Riggins (NC Bar No. 52366)
alyssa.riggins@nelsonmullins.com

¹ Given the broad sweep of this Interrogatory it could conceivably cover documents created or prepared by attorneys containing legal analysis or documents otherwise covered by legislative privilege. However, Defendants have not to their knowledge withheld any documents or data based on these objections.

4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 329-3800

BAKER HOSTETLER LLP
Mark E. Braden* (DC Bar No. 419915)
MBraden@bakerlaw.com
Katherine McKnight* (VA Bar No. 81482)
kmcknight@bakerlaw.com
1050 Connecticut Ave NW, Suite 1100 Washington
DC 20036
* Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

It is hereby certified that on this the 28th day of December, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com
*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
*Counsel for the North Carolina State Board
of Elections; Damon Circosta, Stella
Anderson, Jeff Carmon III, Stacy Eggers IV,
and Tommy Tucker, in their official
capacities with the State Board of Elections*

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
Mitchellbrown@scsj.org
Katelin@scsj.org

J. Tom Boer
Olivia T. Molodanof
Hogan Lovells US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com
Counsel for Intervenor Common Cause

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com

EXHIBIT G

Callahan, Sam

From: Jones, Stanton
Sent: Tuesday, December 28, 2021 11:27 AM
To: Alyssa Riggins; McKnight, Katherine L.; bcraige@pathlaw.com; nghosh@pathlaw.com; psmith@pathlaw.com; zzz.External.akhanna@elias.law; Theodore, Elisabeth; Callahan, Sam; dbradford@jenner.com; 'abran@elias.law'; zzz.External.lmadduri@elias.law; zzz.External.jshelly@elias.law; zzz.External.gwhite@elias.law; Steed, Terence; Stephen Feldman; Hirsch, Sam; 'Schauf, Zachary C.'; Amunson, Jessica Ring; Bracey, Kali N.; Mittal, Urja R.; Adam Doerr; Erik R. Zimmerman; Allison Riggs; Hilary Harris Klein; Mitchell D. Brown; Katelin Kaiser; Boer, Tom; Molodanof, Olivia
Cc: Phil Strach; Tom Farr; Braden, E. Mark
Subject: RE: Legislative Defendants' responses to discovery requests

Alyssa:

If we understand correctly, only Rep. Hall and Sen. Hise will be verifying Legislative Defendants' interrogatory responses because only Rep. Hall and Sen. Hise provided substantive responses to the interrogatories, whereas the other four Legislative Defendants objected and refused to provide any substantive responses on the basis of legislative privilege. If this is the case, then we understand the substantive responses attributed to "Legislative Defendants" or "Defendants" to be provided solely on behalf of Rep. Hall and Sen. Hise. For instance, we understand the response stating, "Defendants state that no partisan or racial data was used or relied upon by Defendants," to be provided solely on behalf of Rep. Hall and Sen. Hise, and we understand that the other four Legislative Defendants are making no such representation. To the extent the substantive responses are instead provided on behalf of all Legislative Defendants, including the four who previously invoked legislative privilege to secure a protective order blocking their depositions, they have now waived the privilege, and accordingly they need to provide signed verifications and we demand to depose them before trial (including over the weekend, if needed) and will seek other appropriate relief from the Court. Please advise immediately whether the substantive responses to the interrogatories are provided solely on behalf of Rep. Hall and Sen. Hise, and not any of the other four Legislative Defendants.

Regards,
Stanton

From: Alyssa Riggins <alyssa.riggins@nelsonmullins.com>
Sent: Tuesday, December 28, 2021 10:59 AM
To: McKnight, Katherine L. <kmcknight@bakerlaw.com>; bcraige@pathlaw.com; nghosh@pathlaw.com; psmith@pathlaw.com; zzz.External.akhanna@elias.law <akhanna@elias.law>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; dbradford@jenner.com; 'abran@elias.law' <abran@elias.law>; zzz.External.lmadduri@elias.law <lmadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; Steed, Terence <Tsteed@ncdoj.gov>; Stephen Feldman <SFeldman@robinsonbradshaw.com>; Hirsch, Sam <SHirsch@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Bracey, Kali N. <KBracey@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>; Adam Doerr <ADoerr@robinsonbradshaw.com>; Erik R. Zimmerman <ezimmerman@robinsonbradshaw.com>; Allison Riggs <AllisonRiggs@southerncoalition.org>; Hilary Harris Klein <hilaryhklein@scsj.org>; Mitchell D. Brown <mitchellbrown@scsj.org>; Katelin Kaiser <katelin@scsj.org>; Boer, Tom <tom.boer@hoganlovells.com>; Molodanof, Olivia <olivia.molodanof@hoganlovells.com>
Cc: Phil Strach <phil.strach@nelsonmullins.com>; Tom Farr <tom.farr@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>
Subject: RE: Legislative Defendants' responses to discovery requests

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426
21 CVS 500085

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

REBECCA HARPER, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants;

COMMON CAUSE, INC.,

Plaintiff,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

**LEGISLATIVE DEFENDANTS'
RESPONSE TO *HARPER*
PLAINTIFFS' SECOND MOTION
TO COMPEL RESPONSES
TO SECOND SET OF
INTERROGATORIES
AND FIRST SET OF
REQUESTS FOR PRODUCTION**

NOW COME President *Pro Tempore* Philip E. Berger, Senator Warren Daniel, Senator Ralph E. Hise, Senator Paul Newton, Speaker Timothy K. Moore, and Representative Destin Hall (collectively, “Legislative Defendants”), by and through undersigned counsel and pursuant to this Court’s December 13, 2021 Scheduling Order and Rules 7(b), 33(a), 34(b), and 37 of the North Carolina Rules of Civil Procedure, and hereby respond to *Harper* Plaintiffs’ Second Motion to Compel Responses to Written Discovery. Legislative Defendants show the Court as follows:

Harper Plaintiffs move to compel production from Legislative Defendants for so-called “concept maps,” and threaten sanctions, but they had an opportunity to exhaust their deposition questions on the topic and in fact know Legislative Defendants have nothing further to produce. Rep. Hall testified at length during his seven-hour deposition on Monday about all potential sources of input in his map-drawing process.¹ He testified that drawing the 120-seat House plan took time and had difficult areas where population requirements made complying with neutral districting criteria challenging.² He testified that to hasten the process of finding solutions for this challenge—considering the time constraints the map-drawers were under—he relied on a staff member who sketched out options.³ Rep. Hall was clear that he was committed to the governing

¹ See, e.g., Draft Transcript of December 27, 2021 Deposition of Rep. Destin Hall (“Hall Tr.”), attached as Exhibit D to the *Harper* Plaintiffs’ Second Motion to Compel, at 116:15-159:6.

² *Id.* 116:15-23; 120:22-122:3.

³ *Id.* 120:22-122:3 (“You know, initially I just you know was simply going in and drawing you know starting with the one county groupings and moving on to county and so on and so forth but as you get into the process it’s more and more difficult to draw these maps it just takes longer just by you know the sheer number of districts that must be drawn, and so with our tight timeline, you know, it became clear we were not going to have time for me to just sort of go in there and figure it out, you know, without any sort of plan at all in drawing these districts. So again, knowing that because what the board of elections had told us we had to have these maps done really by early November I look at the timeline there was no way we were going to be able to finish. At the same time I wanted to draw a congressional map as well and of course the Senate has three chairs, and their Senate maps are, they don’t take as long to draw as the state House map, and so you know they could essentially finish their state Senate map or at least their proposed map and they were working on congressional maps and I wanted to be able to do some of that as well on the House side. So you know that, that was the purpose of the, of having staff work on concepts you know again with just giving a heads up of hey here’s where a given city is we want to keep cities whole; we want to keep a school maybe, you know, we want to keep a college or some university together. That way

redistricting criteria and racial and partisan data never entered the picture;⁴ this exercise of sketching out options was solely focused on the mechanics of dividing population.⁵ This is not unlike any other feedback Rep. Hall received during the map-drawing process; some feedback he took, some he did not.⁶ And he testified about all feedback at his deposition. The sketched maps were limited in scope to a handful of specific areas in the state,⁷ and he never needed to use them in the public hearing room because they were “just a general idea of what districts may look like,” and he was not going to copy them.⁸ Rep. Hall testified that these sketches were electronic, and he

I wasn’t just going in there blind.”); 137:23-138:12 (“time goes on you reach some of the more and more difficult draws in terms of time consumption and just again getting population grouping and when you get those I really needed some more help at that point, and you know when that was I’m going to say probably into the, well into the second week, I think when we would have started you know sort of having a more after game plan before I went in to draw.”).

⁴ *Id.* 114:11-19; 144:16-145:3 (“There was no election data none of the shading or anything of that nature on there.”); 153:21-154:3 (“I think part of your question sort of mischaracterized the situation. I never saw any election data at all. So I think you mentioned somehow something that could, your question in some way left open the door in my opinion that this could have been election data. I didn’t see any election data.”); 154:23-155:7 (describing how staff understood that no election data would be used); 160:21-23 (“I did not consult any map with election or partisan data on it in drawing the maps that were enacted.”); 120:6-13 (“The staff knew what our criteria were and so there was no necessity to do that and I had no reason to believe that that’s, that any election data was being considered.”).

⁵ *Id.* 116:15-23; 120:22-122:3; 122:14-123:15 (“Well, I think generally, but I, you know, what I did was essentially, you know, we would have, I would talk to staff about, you know, whatever grouping we were going to work on and, you know, if it was one that was going to be difficult or, you know, we were just running out of time, they would maybe work on, again, a concept, and but I, you know, it wasn’t that I, you know, went in and just simply copied, you know, whatever could be September they had. You know, I just generally had in mind, you know, where the towns were and where the population might be in a given grouping, gave me some frame of reference to work off of and I, I think for anybody who’s ever sat down and used the Maptitude software they’ll understand that it is really difficult to go in in some of these groupings and just sit down and just draw from scratch without any sort of plan in place, and what can happen is you can easily sort of just get the map get the districts so jumbled up that they’re not exact they’re splitting municipalities and, you know, you’re trying to obviously create the ideal population size. So it is a, it’s a time-consuming process and especially when you’re wanting to do it right and follow the criteria that we put forth.”).

⁶ *See, e.g., id.* 148:11-18 (“it wasn’t something that I was going to go in and copy. It was just a general idea of what districts may look like.”).

⁷ *See id.* 125:10-130:4.

⁸ *Id.* 148:8-18.

has no copies of them.⁹ Both in deposition and through interrogatory responses, Rep. Hall made clear that these concept maps had minimal, if any, impact on the maps he ultimately drew himself at the public terminals at the legislature, and that these maps were not created using partisan or racial data to his knowledge.

Legislative Defendants have complied with all discovery obligations. They made Rep. Hall available to Plaintiffs for deposition and Plaintiffs questioned him exhaustively on this topic. Legislative Defendants also complied with this Court’s December 27, 2021 Order on Harper Plaintiffs’ First Motion to Compel on these discovery requests in providing complete responses to these requests before 9:00 AM EST the day after the order was entered. That Legislative Defendants cannot produce these concept maps does not merit sanctions; Rep. Hall was under no obligation to ensure that every piece of feedback he received during the map-drawing process—no matter how inconsequential—was reduced to paper and preserved in a vault for some future set of plaintiffs. The Court should deny *Harper* Plaintiffs’ Motion.

BACKGROUND

On December 27, 2021, Rep. Hall sat for a deposition. During that deposition, Rep. Hall testified that he personally drew all of the House Map other than the Duplin-Wayne County districts, which Rep. Hall drew initially and were slightly changed by Rep. John Bell. Hall Tr. 102:24-103:18. He further testified that neither he nor his staff used or reviewed political data in the map drawing process. *Id.* 113:13-114:10. The focus of *Harper* Plaintiffs’ consternation is Rep. Hall’s testimony regarding certain concept maps for particular districts which Rep. Hall reviewed with staff late in the process of redistricting. *Id.* 115:15-23. Rep. Hall testified that the purpose of

⁹ *Id.* 147:14-20 (“Q And the concept maps that you were viewing, am I correct in saying that if you just printed one out you could have just brought into it the public hearing room and consulted it; is that correct? A I could have but I didn’t, I didn’t print anything and bring it in there.”); *id.* at 148:2-18.

these concept maps was to speed along the process of drawing the maps—**not** an intention to use partisan or racial data. *Id.* 120:22-121:21. Rep. Hall specifically testified that the purpose of these concept maps was to take concepts of keeping a city or college together in a map—in short, to ensure that he was able to follow the redistricting criteria within the limited time available to draw the maps. *Id.* 121:21-122:3; 122:23-123:15. Rep. Hall testified that these concept maps were prepared for “some of the more difficult draws,” *Id.* 125:6-10. Rep. Hall testified that concept maps were only consulted for a handful of identified districts, as follows:

- Pitt County Grouping: This county was difficult to draw due to efforts to avoid double-bunking the two incumbents there. *Id.* 125:10-13.
- Mecklenburg County Grouping: The intention was to draw maps similar to what had been approved by the Court in 2019, but Rep. Hall was ultimately uncertain whether there was a concept map he consulted, stating that “we really didn’t need to because we knew we were going to try to keep the districts the same” as what had been court-approved in 2019. *Id.* 126:6-127:10.
- Wake County Grouping: Due to the addition of two House districts, it was going to take a “long time” to draw these districts, especially since the addition of those districts made it “tough to really keep the districts very similar to what they were,” so concept maps were intended “to help [him] get it drawn in an efficient manner.” *Id.* 127:11-128:6.
- Forsyth-Stokes County Grouping: Rep. Hall’s goal was to keep this grouping as similar to the court-approved 2019 maps as possible, but the shifting of the grouping to include Stokes County made that more difficult to do efficiently. Rep. Hall believes the concept map “was nonconsequential to [him] in drawing that map.” *Id.* 128:19-130:4.

Despite Harper Plaintiffs’ misleading use of the phrase “strategy sessions,” these discussions were not to strategize on how to maximize partisan advantage, but rather to sketch out options about how to more efficiently draw the maps based on the criteria adopted by the legislature. *Id.* 124:24-25. Rep. Hall testified that in the limited number of times he even reviewed these sketches, they were on an electronic device belonging to Dylan Reel (“Mr. Reel”), who was serving as general counsel at the time; these sketches were not reduced to paper format and Rep. Hall kept no copies. *Id.* 123:16-18. Mr. Reel no longer is an employee of Rep. Hall (or the General Assembly). *Id.* at 214:21-23.

Following the conclusion of Rep. Hall’s deposition, this Court entered an order requiring Legislative Defendants to respond by 9:00 AM EST the next day to *Harper* Plaintiffs’ Second Set of Interrogatories and First Set of Requests for Production of Documents served on December 21, 2021. In its Order, this Court specified that “[n]othing in this Order shall be construed as a limitation on Legislative Defendants’ ability to assert objections to the discovery requests, including any valid and available privilege assertions.” Order on Harper Pltfs.’ Mot. To Compel at p.5.

The next day, Legislative Defendants provided their responses to Harper Plaintiffs’ Discovery Requests by 9:00 AM EST as required by the court’s Order. Regarding the concept maps, these responses indicated the following:

- The concept maps were “to develop options for a limited number of districts in a limited number of county groupings **while complying with redistricting criteria.**” (emphasis added).
- The concept maps “did not dictate map drawing and often Defendant Hall ignored them altogether.”

- Rep. Hall and Mr. Reel, “did not use any racial or political data in preparing these concept maps.”

Leg. Defs.’ Resp. to Harper Pltfs.’ Second Set of Interr. at p.6. Furthermore, Legislative Defendants stated that copies of the concept maps or related data are not in their possession, custody, or control. *Id.* at pp. 6-7. Dissatisfied with these responses, and with little notice to Legislative Defendants, *Harper* Plaintiffs filed the instant Motion.

The Court should decline *Harper* Plaintiffs’ request to divert party and judicial resources in pursuit of this red herring, as Legislative Defendants have complied with all discovery requirements including providing full and adequate responses to their Discovery Requests and making Rep. Hall available for seven hours of deposition.

ARGUMENT

A. Legislative Defendants have provided complete responses to Harper Plaintiffs’ Discovery Requests.

Harper Plaintiffs’ Motion to Compel is improper because Legislative Defendants have complied with their obligations pursuant to both the North Carolina Rules of Civil Procedure and the Court’s Order on *Harper* Plaintiffs’ First Motion to Compel. *Harper* Plaintiffs’ first interrogatory in their Second Set of Interrogatories ask Legislative Defendants to identify individuals who “took part in the drawing of the 2021 plans.” Legislative Defendants provided an extensive listing of legislators, legislative staff, and third parties responsive to this request. *Harper* Plaintiffs’ second interrogatory requests the identification of “all documents or data relied upon” by any person identified in the prior response. Legislative Defendants identified the publicly available data that was consulted along with an explanation of the concept maps described *supra* that Plaintiffs were already aware of through thorough examination of Rep. Hall under oath. Legislative Defendants also clarified that none of them, including Rep. Hall, have copies or records

of any concept maps Rep. Hall reviewed. Legislative Defendants have fully and completely responded to these interrogatories.

Contrary to *Harper* Plaintiffs’ assertions, Legislative Defendants are not obligated to produce something they do not have possession, custody, or control of and that, to their knowledge, does not exist. *Progress Solar Sols., LLC v. Fire Prot., Inc.*, No. 5:17-CV-152-D, 2019 WL 4463302, at *8 (E.D.N.C. Sept. 17, 2019) (“Of course, the court cannot compel SMS and Long to produce documents that are not within their possession, custody, or control.”) Legislative Defendants have searched for the concept maps that Rep. Hall testified he reviewed, but have been unable to locate any such materials. There is nothing further Legislative Defendants can, or are obligated to, do to obtain the documents *Harper* Plaintiffs are seeking. Obviously, however, the *Harper* Plaintiffs can seek these documents, if they exist, directly from Mr. Reel.

Harper Plaintiffs claim that Legislative Defendants have not disputed that these maps are relevant, but this is a premature conclusion by *Harper* Plaintiffs. As is customary in North Carolina legal practice, Legislative Defendants have reserved the right to object to relevance until the time of trial. Legislative Defs.’ Responses to Harper Pltfs.’ Second Set of Interr. at p. 2. However, as is apparent from Rep. Hall’s deposition, these concept maps he reviewed were created by his then-staffer in an effort to make Rep. Hall’s map-drawing more efficient as the map drawing process dragged on, rather than to implement any partisan intent. Any concept maps for the four county clusters identified in Rep. Hall’s deposition were, at best, starting points based on various nonpartisan goals like avoiding double-bunking or maintaining court-approved districts. *See* Hall Tr. 213:20-214:8. Ultimately, the starting point Rep. Hall made for any grouping on the enacted map—the House map being challenged—has been produced via video and other documentation. Possible other starting points for drawing a grouping are not relevant. Accordingly, the relevant

documents are those that were produced by the Legislative Defendants in response to Harper Plaintiffs’ First Set of Requests for Production of Documents, all of which are either publicly available or have been made available to the Harper Plaintiffs.

Ultimately, Harper Plaintiffs’ Motion should be denied because Legislative Defendants have complied with their obligations under the Court’s December 27, 2021 Order and, after good faith efforts to locate the concept maps discussed at Rep. Hall’s deposition, have produced all documents in their possession, custody, or control that are responsive to Harper Plaintiffs’ requests.

B. Sanctions are unwarranted where Legislative Defendants do not have possession, custody, or control of the documents at issue.

Harper Plaintiffs attempt to impose sanctions on Legislative Defendants based on claims of spoliation or failure to comply with the Court’s prior Order on Harper Plaintiff’s Motion to Compel is wholly unwarranted here for several reasons.

First, Legislative Defendants have complied with the Court’s Order. As described above, Legislative Defendants provided complete responses to Harper Plaintiffs’ Discovery Requests before 9:00 AM EST on December 28, 2021, and that was on the heels of an extensive deposition of Rep. Hall where Plaintiffs sought and received detailed information about these map sketches.

Second, there is no evidence that the concept maps are being withheld or have been lost or destroyed. The information is simply not in the Legislative Defendants’ possession, custody, or control, and therefore they do not have the ability to produce it.

Third, the concept maps are not materially relevant to this litigation. Rep. Hall’s testimony makes clear that he drew all maps himself on the public redistricting terminals, and did so without the use of partisan or racial data. Rep. Hall’s review of concept maps for certain districts does not change these facts. Moreover, Rep. Hall’s testimony was either equivocal about whether there

were any concept maps (e.g., he ultimately did not clearly recall reviewing a concept map for the Mecklenburg cluster, (Hall Tr. 126:6-127:10)) or did not consider them to be particularly influential, useful, or consequential, (*id.* 128:19-130:4; Leg. Defs.’ Resp. to Harper Pltfs.’ Second Set of Interr. at p.6).

Fourth, the Court can and should consider less punitive alternatives prior to drawing any adverse inferences. *See Porters Neck Ltd., LLC v. Porters Neck Country Club, Inc.*, 2021-NCCOA-41, ¶ 31, 276 N.C. App. 95, 855 S.E.2d 819, 826 (“On appellate review, ‘where the record on appeal permits the inference that the trial court considered less severe sanctions, this Court may not overturn the decision of the trial court unless it appears so arbitrary that it could not be the result of a reasoned decision.’” (quoting *Badillo v. Cunningham*, 177 N.C. App. 732, 734, 629 S.E.2d 909, 911, *aff’d per curiam*, 361 N.C. 112, 637 S.E.2d 538 (2006))). For example, the Court could order expedited discovery of Mr. Reel that would require disclosure of the concept maps, if they exist. Legislative Defendants should not be punished for *Harper* Plaintiffs’ failure to seek discovery through proper methods (i.e., subpoenaing Mr. Reel directly).

CONCLUSION

Legislative Defendants have provided the information sought by Harper Plaintiffs in their Discovery Requests as required by this Court’s December 27, 2021 Order, both through discovery responses and Rep. Hall’s deposition testimony. Legislative Defendants do not have the concept maps referenced in Rep. Hall’s deposition in their possession, custody, or control. This Court should therefore deny Harper Plaintiffs’ Motion.

Respectfully submitted, this the 29th day of December, 2021.

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com
Thomas A. Farr (NC Bar No. 10871)
tom.farr@nelsonmullins.com
Alyssa M. Riggins (NC Bar No. 52366)
alyssa.riggins@nelsonmullins.com
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 329-3800

BAKER HOSTETLER LLP
Mark E. Braden* (DC Bar No. 419915)
MBraden@bakerlaw.com
Katherine McKnight* (VA Bar No. 81482)
kmcknight@bakerlaw.com
1050 Connecticut Ave NW, Suite 1100 Washington
DC 20036
* Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

It is hereby certified that on this the 29th day of December, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com
Counsel for Plaintiffs North Carolina League of Conservation Voters, et al.

Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
Counsel for the North Carolina State Board of Elections; Damon Circosta, Stella Anderson, Jeff Carmon III, Stacy Eggers IV, and Tommy Tucker, in their official capacities with the State Board of Elections

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
Counsel for Plaintiffs North Carolina League of Conservation Voters, et al.

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
Katelin@scsj.org

J. Tom Boer
Olivia T. Molodanof
Hogan Lovells US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com
Counsel for Intervenor Common Cause

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com

STATE OF NORTH CAROLINA

COUNTY OF WAKE

2021 DEC 29 A 8:32

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426, 21 CVS 500085

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, INC.; S.C.
HENRY M. MICHAUX, JR., et al.,

Plaintiffs,

REBECCA HARPER, et al.,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

**NCLCV PLAINTIFFS' MOTION
FOR PROTECTIVE ORDER
QUASHING NOTICE OF
DEPOSITION DIRECTED TO
NCLCV COUNSEL OF RECORD
SAM HIRSCH AND DIRECTING
LEGISLATIVE DEFENDANTS TO
STRIKE SAM HIRSCH FROM
THEIR WITNESS LIST FOR TRIAL**

Pursuant to Rule 26(c), the NCLCV Plaintiffs respectfully move the Court to issue a protective order prohibiting the Legislative Defendants from deposing NCLCV Plaintiffs' litigation counsel of record, Sam Hirsch, and further directing Legislative Defendants to strike Mr. Hirsch from their witness list for trial. Mr. Hirsch is not a fact witness. He has no knowledge whatsoever of "the facts in controversy" with respect to the Enacted Plans. Instead, Legislative Defendants apparently are seeking to depose Mr. Hirsch and call him as a witness at trial because of the role he played with respect to the computerized creation of the NCLCV Plaintiffs' demonstrative maps.

As an initial matter, the Legislative Defendants' notice of deposition is procedurally defective. Mr. Hirsch is not a party to this case and his deposition cannot simply be noticed. In any event, seeking the deposition of opposing litigation counsel is an extraordinary intrusion into the attorney-client and work-product privileges and is not permitted under North Carolina law

except where the information is critical to the case and cannot possibly be obtained in any other way. That is not the case here.

Even more inappropriate than seeking Mr. Hirsch's deposition is Legislative Defendants' listing of Mr. Hirsch as a potential witness at trial. This raises serious issues under the Rules of Professional Conduct and would cause distraction and disruption to the orderly process that will be necessary to try three consolidated complex cases of significant public interest in just three days, with over a dozen witnesses, beginning just five days from now. *See* Case Management Order at 3-4 (describing the challenges of resolving this litigation in an extremely limited timeframe). Mr. Hirsch is the lawyer who will be putting on NCLCV's expert witness and participating in cross-examining Legislative Defendants' expert witnesses. He should not be required to leave counsel table to sit in the witness box. The NCLCV Plaintiffs respectfully request that this Court issue a protective order prohibiting Legislative Defendants from deposing Mr. Hirsch or attempting to call him as a witness at trial.

BACKGROUND

The issue in this case is whether the Legislative Defendants' Enacted Plans deprive the NCLCV Plaintiffs of the rights guaranteed to them by the North Carolina Constitution. The Legislative Defendants' primary defense to this violation of rights is to assert that the Enacted Plans were not drawn with the intent to dilute the votes of NCLCV Plaintiffs and other Democratic and Black voters. Instead, they argue, the partisan bias and racial vote dilution present in the Enacted Plans is the inevitable result of the Legislative Defendants' adherence to traditional neutral districting principles as applied to the geography and demographics of North Carolina. In their Verified Complaint and Motion for a Preliminary Injunction, the NCLCV Plaintiffs showed that this defense does not hold water. The NCLCV Plaintiffs offered demonstrative congressional and

legislative redistricting plans (which they called the “Optimized Maps”) to show that it is possible to draw redistricting plans that adhere to all traditional neutral districting principles without producing an extreme partisan skew and without diluting the voting strength of Black citizens.

In their Motion for Preliminary Injunction, the NCLCV Plaintiffs did not rely on the fact that the plans were produced through computational redistricting (though they did describe the computational redistricting process in their Verified Complaint). Rather, the Tufts University mathematics professor, Dr. Moon Duchin, who offered an affidavit in support of the Motion for Preliminary Injunction, opined only on the objective features of the NCLCV Plaintiffs’ demonstrative maps and how those objective features compared with the objective features of the Enacted Plans. Dr. Duchin’s testimony was thus fully consistent with Rule 702 as it was provided “to assist the trier of fact to understand the evidence or determine a fact in issue.” Dr. Duchin did not consider, and did not opine on, anything related to the method and means of formulating or producing the NCLCV Plaintiffs’ demonstrative maps, including the source code, source data, and input parameters. She considered, and opined, on only how the demonstrative maps objectively achieved various traditional redistricting criteria and how they did so without creating the extreme partisan bias of the Enacted Plans. *See Ex. A, Duchin Report.*

Nonetheless, Legislative Defendants repeatedly sought discovery with respect to how the “Optimized Maps” were created. On December 20th, this Court ordered that by 5:00 p.m. on December 23rd, the NCLCV Plaintiffs produce to the Legislative Defendants “the method and means by which the Optimized Maps were formulated and produced, including, but not limited to all source code, source data, input parameters, and all outputted data associated with the Optimized Maps.” Order on Legislative Defendants’s Motion to Compel at 4 (Dec. 20, 2021). The Court

further ordered the NCLCV Plaintiffs to “identify any and all persons who took part in drawing or participated in the computerized production of the Optimized Maps.” *Id.*

The NCLCV Plaintiffs fully complied with that Order (and the Legislative Defendants have not claimed otherwise). The letter accompanying the NCLCV Plaintiffs’ voluminous production described the method and means by which the demonstrative maps were formulated and further described all the files being produced, including the maps’ source code, source data, input parameters, and all outputted data. The letter also explained (consistent with the NCLCV Plaintiffs’ position in moving for a preliminary injunction) that the NCLCV Plaintiffs do not intend to offer any evidence at trial about how the maps were created. Instead, the NCLCV Plaintiffs intend to rely on these demonstrative maps to rebut the Legislative Defendants’ argument that the Enacted Plans’ extreme partisan bias was inevitable. In other words, although the NCLCV Plaintiffs provided the Legislative Defendants with *all* the information about how their plans were created through a computerized multi-objective optimization process—including all source code, source data, input parameters, and outputted data—the NCLCV Plaintiffs will not offer at trial any evidence or argument about these issues. To avoid needless controversy, the NCLCV Plaintiffs will refrain from calling their plans the “Optimized Maps” and will instead refer to them simply as the “NCLCV demonstrative maps.”

As is also described in the letter NCLCV Plaintiffs provided to Legislative Defendants on December 23rd, the person who directed the creation of the NCLCV Plaintiffs’ demonstrative maps was NCLCV Plaintiffs’ attorney, Sam Hirsch, who is a partner in the Washington, D.C. office of Jenner & Block LLP and one of the lead counsel in this case. The letter explained that Mr. Hirsch was assisted in this process by non-testifying consulting experts. On December 27th, presumably in response to the disclosure that Mr. Hirsch directed the creation of the NCLCV Plaintiffs’

demonstrative maps, the Legislative Defendants noticed the deposition of Mr. Hirsch for Friday, December 31st, at 9:00 a.m. *See* Ex. B, Deposition Notice of Sam Hirsch (Dec. 27, 2021). Later that same day, the Legislative Defendants provided their witness list for trial, listing Mr. Hirsch as a witness they may call at trial. *See* Ex. C, Legislative Defendants’ Witness List (Dec. 27, 2021).

The NCLCV Plaintiffs subsequently informed the Legislative Defendants that their noticed deposition of Mr. Hirsch was improper and requested that they strike Mr. Hirsch from their witness list or the NCLCV Plaintiffs would be forced to seek appropriate relief from the Court. *See* Ex. D, Email from Z. Schauf (Dec. 28, 2021). Legislative Defendants chose not to respond, thus necessitating this motion.

ARGUMENT

Depositions of opposing counsel are not permitted unless (1) no other means exists to obtain the information, (2) the information sought is relevant and nonprivileged, and (3) the information is crucial to the preparation of the case. Here, none of these circumstances is present. The information Legislative Defendants apparently are seeking is not relevant to any issue before the Court. And as to the issues that are before the Court, the Legislative Defendants already have everything they need to analyze the NCLCV Plaintiffs’ demonstrative maps and can seek any other information through less intrusive means, such as interrogatories. In any event, the deposition notice is procedurally deficient. Mr. Hirsch is not a party to the case and his testimony can be obtained only by subpoena.

The Legislative Defendants’ attempt to call Mr. Hirsch as a witness at trial is likewise impermissible and raises serious issues under the North Carolina Rules of Professional Conduct. Mr. Hirsch is not a necessary witness in this case, and the Legislative Defendants’ listing Mr. Hirsch as a potential witness threatens to disrupt the orderly presentation of a case that already

presents tremendous challenges for counsel and the Court to resolve on the compressed timetable ordered by the North Carolina Supreme Court.

I. The Court Should Issue a Protective Order Prohibiting the Deposition of Mr. Hirsch.

The Court should issue a protective order prohibiting the deposition of Mr. Hirsch for at least two reasons: (1) the notice of deposition is procedurally deficient; and (2) the Legislative Defendants cannot meet their burden to show that a deposition of opposing counsel is necessary.

A. The Notice of Deposition Is Procedurally Improper.

As an initial matter, the notice of deposition is procedurally improper. The Legislative Defendants failed to comply with the basic requirements of Rules 30 and 45 of the North Carolina Rules of Civil Procedure in issuing their notice. As counsel to the NCLCV Plaintiffs, Mr. Hirsch is not a party to the litigation, but is instead a third-party who may be deposed, if at all, only upon proper service of an enforceable subpoena. *See* N.C. R. Civ. P. 30(a) (requiring a subpoena to compel the attendance of a witness at a deposition, “provided that no subpoena need be served on a deponent who is a party”); *Kelley v. Agnoli*, 205 N.C. App. 84, 100, 695 S.E.2d 137, 147 (2010) (Plaintiff “has cited no authority suggesting that a party’s law firm is itself a party, and we know of none.”) (citing *Bailey v. State*, 353 N.C. 142, 156, 540 S.E.2d 313, 322 (2000)); *Blue Ridge Pediatric & Adolescent Medicine, Inc. v. First Colony Healthcare, LLC*, No. 11 CVS 127, 2012 WL 3249553, at *6 (N.C. Super. Ct. Aug. 9, 2012) (citations omitted). Legislative Defendants have not issued any subpoena to Mr. Hirsch.

B. The Legislative Defendants Have Not Shown that the Deposition of Mr. Hirsch Is Necessary.

In any event, the Legislative Defendants cannot meet their burden to show that a deposition of the NCLCV Plaintiffs’ litigation counsel is necessary. The seminal case on this issue is *Shelton v. American Motors Corp.*, 805 F.2d 1323 (8th Cir. 1986), which holds that depositions of

opposing counsel may take place only when the party seeking to take the deposition has met its burden of demonstrating that “(1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case.” *Id.* at 1327 (citation omitted). Although the North Carolina Supreme Court has not directly adopted *Shelton*, North Carolina state and federal courts, like courts around the country, have applied *Shelton*’s test. *See, e.g., Blue Ridge Pediatric & Adolescent Medicine, Inc.*, 2012 WL 3249553, at *10 (holding that the *Shelton* test was appropriate because it closely parallels the language of Rule 26, which allows a party to limit discovery where information sought is available from other less-burdensome sources which do not threaten to invade privileged information); *N.F.A. Corp. v. Riverview Narrow Fabrics, Inc.*, 117 F.R.D. 83, 85 (M.D.N.C. 1987) (applying *Shelton* in granting motion forbidding party from deposing opponent’s counsel and finding that because a “deposition of a party’s attorney is usually both burdensome and disruptive, the mere request to depose a party’s attorney constitutes good cause for obtaining a protective order unless the party seeking the deposition can show both the propriety and need for the deposition”).

Under *Shelton*, eliciting testimony from an opponent’s *litigation* counsel is especially disfavored. *Shelton*, 805 F.2d at 1327. Taking the testimony of litigation counsel inevitably risks invading the attorney-client privilege and opinion work product—both of which are unqualified, absolute protections. *See Willis v. Duke Power Co.*, 291 N.C. 19, 36, 229 S.E.2d 191, 201 (1976) (no discovery “whatsoever” may be taken of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation). Thus, if there is a practical alternative means for obtaining information sought from counsel, a deposition of counsel should not go forward. *See, e.g., Asbury v. Litton Loan Servicing, LP*, 2009 WL 973095,

at *2 (S.D. W.Va. Apr. 9, 2009) (granting motion to quash subpoena seeking deposition of opposing counsel where other means, including interrogatories, would provide the information sought, and explaining that “courts have required exhaustion of those means before depositions of counsel are allowed”); *Guantanamera Cigar Co. v. Corporacion Habanos, S.A.*, 263 F.R.D. 1, 8 (D.D.C. 2009) (“when seeking to depose opposing counsel, the cards are stacked against the requesting party from the outset and they must prove the deposition’s necessity”).

The Legislative Defendants fail to demonstrate any one of the three requirements to depose Mr. Hirsch, let alone all three. *First*, there are ample alternative means for obtaining the information that Legislative Defendants apparently are seeking from Mr. Hirsch. In compliance with the Court’s December 20th Order, the NCLCV Plaintiffs already produced *all* the data and information that the Legislative Defendants legitimately need to analyze the NCLCV Plaintiffs’ demonstrative maps. This included the method and means by which the demonstrative maps were formulated and produced, including, but not limited to, all source code, source data, input parameters, and all outputted data associated with them. To the extent Legislative Defendants believe they need any additional information, they may propound appropriate interrogatories. The Legislative Defendants have adduced no evidence that Mr. Hirsch’s deposition is “essential” or that there are no alternative means to obtain what they believe they need. Indeed, they have not even identified to the NCLCV Plaintiffs what it is they want to depose Mr. Hirsch about.

Second, the information Legislative Defendants seek to obtain by deposing litigation counsel is inextricably interwoven with attorney-client communications and opinion work product. The NCLCV Plaintiffs’ demonstrative maps were developed specifically for this litigation. All of Mr. Hirsch’s work in this matter has been done in anticipation of litigation, and his substantive communications, including with non-testifying consulting experts, are protected by privilege.

Deposing Mr. Hirsch would invade privileged communications, litigation strategy, and the mental impressions, opinions, and conclusions of trial counsel. In contrast, if the Legislative Defendants were to propound appropriate interrogatories, as the NCLCV Plaintiffs suggested, this would enable the NCLCV Plaintiffs to disaggregate facts from communications and work product, and to provide the factual information sought without invading these privileges and protections.

Third, further information about how the demonstrative maps were created is not even relevant to this case and is certainly not “crucial” to the Legislative Defendants’ defense. Although the Legislative Defendants apparently want to depose Mr. Hirsch on the method and means of creating the NCLCV Plaintiff’s demonstrative maps, the NCLCV Plaintiffs do not intend to offer at trial any evidence or argument at all about how their demonstrative maps were created. This case—and the two others that will be tried together with it—is about the maps enacted by the General Assembly. The NCLCV Plaintiffs’ demonstrative maps will be offered to demonstrate that the Legislative Defendants are wrong to claim that the extreme partisan bias in the Enacted Plans is a necessary byproduct of applying traditional neutral districting principles to North Carolina’s geography and demographics. For this limited purpose, what matters—and what the NCLCV Plaintiffs will rely upon at trial—are the objective features of those maps. The Legislative Defendants have not shown, and cannot show, that anything Mr. Hirsch would testify about is “crucial” to their case. Indeed, that is especially true given all the information about the demonstrative maps’ creation that the Legislative Defendants have *already* received. In short, the information the Legislative Defendants apparently seek to obtain—an attempt to rebut a rebuttal—does not justify the extraordinary departure from regular order involved in permitting a deposition of opposing trial counsel.

II. The Court Should Order the Legislative Defendants to Strike Mr. Hirsch from Their Witness List for Trial.

For similar reasons, the Court should order Legislative Defendants to strike Mr. Hirsch from their witness list and prohibit Legislative Defendants from calling Mr. Hirsch as a witness at trial. The North Carolina Supreme Court has adopted a formidable threshold a party must overcome before calling opposing counsel as a witness at trial: “The circumstances under which a court will permit a lawyer for a party, even a prosecuting attorney, to take the witness stand must be such that a compelling reason for action exists.” *State v. Simpson*, 314 N.C. 359, 373, 334 S.E.2d 53, 62 (1985); *see also Restatement (Third) of the Law Governing Lawyers* § 108(d) (“A tribunal should not permit a lawyer to call opposing trial counsel as a witness unless there is a compelling need for the lawyer’s testimony.”).

As explained above, there is no compelling need for Mr. Hirsch’s testimony. Moreover, putting Mr. Hirsch on the witness list raises serious issues under Rule 3.7 of the North Carolina Rules of Professional Conduct. Under that Rule, a “lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness.” Mr. Hirsch is the counsel who will be putting on the NCLCV’s main witness and participating in the cross-examination of the Legislative Defendants’ witnesses. This tactic of listing Mr. Hirsch as a potential trial witness creates the potential for an ethical conflict that would disrupt the trial and generate numerous issues for the Court to resolve during an already extraordinarily compressed timeframe. *Cf. Matter of R.D.*, 376 N.C. 244, 255 (2020) (upholding trial court’s refusal to require attorney to testify because of “the existence of the potential for an ethical conflict pursuant to Rule 3.7 of the Rules of Professional Conduct”).

To be clear, Mr. Hirsch clearly is not a “necessary” witness under Rule 3.7. Indeed, Mr. Hirsch is not a “witness” to the facts in controversy in this litigation at all. As the Court recently

stated, the “heart of the dispute in this redistricting litigation” is “the information and documentation pertaining to the *Enacted Plans*, including the identification of all persons who took part in the drawing of the *Enacted Plans* in any way, as well as all documents or data relied upon by those involved in the map drawing process [for the *Enacted Plans*].” Order on Harper Plaintiffs’ Motion to Compel at 4 (Dec. 27, 2021) (emphasis added).

Mr. Hirsch has no first-hand factual knowledge whatsoever as to any of these issues about how the *Enacted Plans* were created. In fact, if anyone has such factual knowledge, it is Legislative Defendants’ counsel. As Legislative Defendants stated in their response to an interrogatory requiring them to identify “any person” who “took part in the drawing of the 2021 Plan,” including “providing input, directly or indirectly to any Legislative Defendant”: “*Attorneys at Nelson Mullins and Baker Hostetler provided legal advice in connection with the 2021 redistricting.*” See Ex. E, Legislative Defendants’ Interrogatory Responses at 5 (Dec. 28, 2021) (emphasis added). Yet the NCLCV Plaintiffs have not sought to call these attorneys—the Legislative Defendants’ counsel in this litigation—as witnesses at trial.

Because Mr. Hirsch is not a fact witness, he cannot shed any light on the important issues the Court has been tasked with resolving. Mr. Hirsch’s knowledge goes only to the process by which the NCLCV Plaintiffs’ demonstrative maps were created with the assistance of non-testifying consulting experts, which is not a proper subject of discovery. See N.C. R. Civ. P. 26(b)(2) (“[A] party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial.”). This

prohibition would be meaningless if the opposing party could simply examine opposing counsel on the same subjects, as the Legislative Defendants are attempting to do here.

The Legislative Defendants previously have claimed that inquiry into this process is relevant “given that the NCLCV Plaintiffs asked this Court to require North Carolina elections to be conducted under their maps as opposed to the Enacted Plans.” Legislative Defendants’ Response to Harper Plaintiffs Motion to Compel at 8 (Dec. 27, 2021). But a party’s litigation counsel often participates in—and even directs—the creation of a proposed remedy that the party asks the Court to adopt. That does not make counsel a necessary witness at trial. Under that logic, a class-action defendant, for example, could put plaintiff’s counsel on their witness list simply because counsel worked with a non-testifying expert on the creation of a damages remedy and then asked the Court to adopt it.

The Court should order the Legislative Defendants to remove Mr. Hirsch from their witness list and prohibit Legislative Defendants from calling Mr. Hirsch as a witness at trial.

CONCLUSION

For the foregoing reasons, the Court should grant the motion for protective order and order that the deposition of Mr. Hirsch cannot take place and that the Legislative Defendants must strike Mr. Hirsch from their witness list and may not call Mr. Hirsch as a witness at trial.

Dated: December 29, 2021

Respectfully submitted,

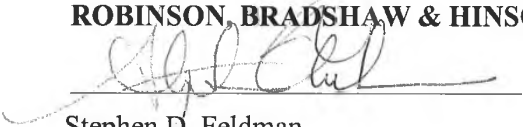
JENNER & BLOCK LLP

Sam Hirsch*
Jessica Ring Amunson*
Kali Bracey*
Zachary C. Schauf*
Karthik P. Reddy*
Urja Mittal*
JENNER & BLOCK LLP
1099 New York Avenue NW, Suite 900
Washington, D.C. 20001
(202) 639-6000
shirsch@jenner.com
zschauf@jenner.com

David Bradford*
JENNER & BLOCK LLP
353 North Clark Street
Chicago, IL 60654
(312) 923-2975
dbradford@jenner.com

* *Admitted pro hac vice*

ROBINSON, BRADSHAW & HINSON, P.A.



Stephen D. Feldman
North Carolina Bar No. 34940
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
(919) 239-2600
sfeldman@robinsonbradshaw.com

Adam K. Doerr
North Carolina Bar No. 37807
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
(704) 377-2536
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
North Carolina Bar No. 50247
ROBINSON, BRADSHAW & HINSON, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
(919) 328-8800
ezimmerman@robinsonbradshaw.com

Counsel for NCLCV Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon each of the parties to this action by electronic mail to counsel at the e-mail addresses indicated below, in accordance with North Carolina Rule of Civil Procedure 5(b)(1)(a):

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraig@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, DC 20002
lmadduri@elias.law
jshelly@elias.law
gwhite@elias.law

Abha Khanna
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
akhanna@elias.law

Elisabeth S. Theodore
R. Stanton Jones
John Cella
Samuel F. Callahan
ARNOLD AND PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
john.cella@arnoldporter.com
stanton.jones@arnoldporter.com
samuel.callahan@arnoldporter.com

Phillip J. Strach
Thomas A. Farr
Gregory P. McGuire
D. Martin Warf
John E. Branch III
Alyssa M. Riggins
Nathaniel J. Pencook
NELSON MULLINS RILEY & SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
phillip.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
greg.mcguire@nelsonmullins.com
martin.warf@nelsonmullins.com
john.branch@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
nate.pencook@nelsonmullins.com

Mark E. Braden
Katherine McKnight
Patrick T. Lewis
Sean Sandomoski
Richard Raile
BAKER HOSTETLER LLP
1050 Connecticut Avenue NW,
Suite 1100
Washington, DC 20036
mbraden@bakerlaw.com
kmcknight@bakerlaw.com
plewis@bakerlaw.com
ssandomoski@bakerlaw.com
rraile@bakerlaw.com

Counsel for Plaintiffs Representative Destin Hall, Senator Warren Daniel, Senator Ralph E. Hise, Jr., Senator Paul Newton, Representative Timothy K. Moore, and Senator Phillip E. Berger

*Counsel for Plaintiffs Rebecca Harper,
et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Jeffrey Loperfido
SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org
jeffloperfido@scsj.org

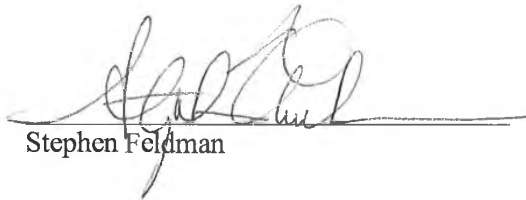
J. Tom Boer
Olivia T. Molodanof
HOGAN LOVELLS US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
oliviamolodanof@hoganlovells.com

Counsel for Plaintiff Common Cause

This 29th day of December, 2021.

Terence Steed
Stephanie Brennan
Amar Majmundar
N.C. DEPARTMENT OF JUSTICE
Post Office Box 629
Raleigh, NC 27502-0629
tsteed@ncdoj.gov
sbrennan@ncdoj.gov
amajmundar@ncdoj.gov

*Counsel for Defendants the North Carolina
State Board of Elections, Damon Circosta,
Stella Anderson, Jeff Carmon III, Stacy Eggers
IV, Tommy Tucker, Karen Brinson Bell; and the
State of North Carolina*



Stephen Feldman

EXHIBIT A

21 Nov 16 2:26

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

2021 NOV 16 P 10:26
SUPERIOR COURT DIVISION
CVS

NORTH CAROLINA LEAGUE OF CONSERVATION
VOTERS, INC.; HENRY M. MICHAUX, JR.; DANDRIELLE
LEWIS; TIMOTHY CHARTIER; TALIA FERNOS;
KATHERINE NEWHALL; JASON PARSLEY; EDNA
SCOTT; ROBERTA SCOTT; YVETTE ROBERTS;
JEREANN KING JOHNSON; REVEREND REGINALD
WELLS; YARBROUGH WILLIAMS, JR.; REVEREND
DELORIS L. JERMAN; VIOLA RYALS FIGUEROA; and
COSMOS GEORGE,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in his official capacity
as Chair of the House Standing Committee on Redistricting;
SENATOR WARREN DANIEL, in his official capacity as Co-
Chair of the Senate Standing Committee on Redistricting and
Elections; SENATOR RALPH E. HISE, JR., in his official
capacity as Co-Chair of the Senate Standing Committee on
Redistricting and Elections; SENATOR PAUL NEWTON, in
his official capacity as Co-Chair of the Senate Standing
Committee on Redistricting and Elections;
REPRESENTATIVE TIMOTHY K. MOORE, in his official
capacity as Speaker of the North Carolina House of
Representatives; SENATOR PHILIP E. BERGER, in his
official capacity as President Pro Tempore of the North
Carolina Senate; THE STATE OF NORTH CAROLINA; THE
NORTH CAROLINA STATE BOARD OF ELECTIONS;
DAMON CIRCOSTA, in his official capacity as Chairman of
the North Carolina State Board of Elections; STELLA
ANDERSON, in her official capacity as Secretary of the North
Carolina State Board of Elections; JEFF CARMON III, in his
official capacity as Member of the North Carolina State Board
of Elections; STACY EGGERS IV, in his official capacity as
Member of the North Carolina State Board of Elections;
TOMMY TUCKER, in his official capacity as Member of the
North Carolina State Board of Elections; and KAREN
BRINSON BELL, in her official capacity as Executive Director
of the North Carolina State Board of Elections,

Defendants.

AFFIDAVIT OF
DR. MOON DUCHIN

I, Dr. Moon, Duchin, having been duly sworn by an officer authorized to administer oaths, depose and state as follows:

1. I am over 18 years of age, legally competent to give this Affidavit, and have personal knowledge of the facts set forth in this Affidavit.
2. All of the quantitative work described in this Affidavit was performed by myself with the support of research assistants working under my direct supervision.

Background and qualifications

3. I hold a Ph.D. and an M.S in Mathematics from the University of Chicago as well as an A.B. in Mathematics and Women's Studies from Harvard University.
4. I am a Professor of Mathematics and a Senior Fellow in the Jonathan M. Tisch College of Civic Life at Tufts University.
5. My general research areas are geometry, topology, dynamics, and applications of mathematics and computing to the study of elections and voting. My redistricting-related work has been published in venues such as the Election Law Journal, Political Analysis, Foundations of Data Science, the Notices of the American Mathematical Society, Statistics and Public Policy, the Virginia Policy Review, the Harvard Data Science Review, Foundations of Responsible Computing, and the Yale Law Journal Forum.
6. My research has had continuous grant support from the National Science Foundation since 2009, including a CAREER grant from 2013–2018. I am currently on the editorial board of the journals Advances in Mathematics and the Harvard Data Science Review. I was elected a Fellow of the American Mathematical Society in 2017 and was named a Radcliffe Fellow and a Guggenheim Fellow in 2018.
7. A current copy of my full CV is attached to this report.
8. I am compensated at the rate of \$400 per hour.

Analysis of 2021 enacted redistricting plans in North Carolina

Moon Duchin
Professor of Mathematics, Tufts University
Senior Fellow, Tisch College of Civic Life

November 16, 2021

1 Introduction

On November 4, 2021, the North Carolina General Assembly enacted three districting plans: maps of 14 U.S. Congressional districts, 50 state Senate districts, and 120 state House districts. This affidavit contains a brief summary of my evaluation of the properties of these plans. My focus will be on the egregious partisan imbalance in the enacted plans, following a brief review of the traditional districting principles.

Because redistricting inevitably involves complex interactions of rules, which can create intricate tradeoffs, it will be useful to employ a direct comparison to an alternative set of plans. These demonstrative plans illustrate that it is possible to *simultaneously maintain or improve* metrics for all of the most important redistricting principles that are operative in North Carolina's constitution and state and federal law. Crucially, this shows that nothing about the state's political geography compels us to draw a plan with a massive and entrenched partisan skew.

To this end, I will be comparing the following plans: the enacted plans SL-174, SL-173, and SL-175 and a corresponding set of alternative plans labeled NCLCV-Cong, NCLCV-Sen, and NCLCV-House (proposed by plaintiffs who include the North Carolina League of Conservation Voters).

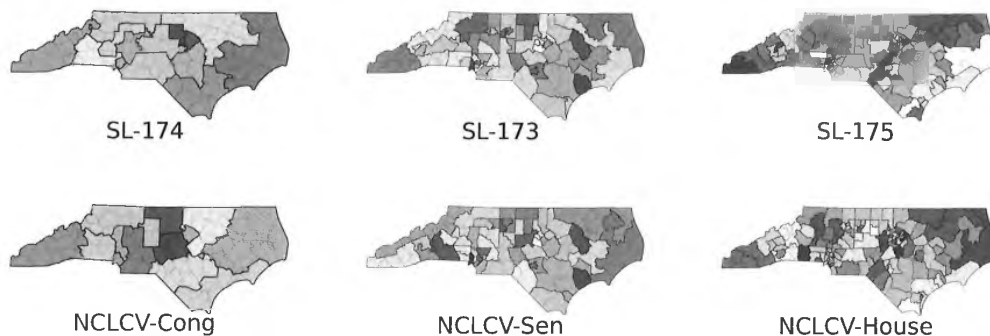


Figure 1: The six plans under discussion in this affidavit.

2 Traditional districting principles

Principles that are relevant to North Carolina redistricting include the following.

- **Population balance.** The standard interpretation of *One Person, One Vote* for Congressional districts is that districts should be fine-tuned so that their total Census population deviates by no more than one person from any district to any other.

There is more latitude with legislative districts; they typically vary top-to-bottom by no more than 10% of ideal district size. In North Carolina, the Whole County Provisions make it very explicit that 5% deviation must be tolerated if it means preserving more counties intact.

All six plans have acceptable population balance.

Population deviation

	Max Positive Deviation	District	Max Negative Deviation	District
SL-174	0	(eight districts)	–1	(six districts)
NCLCV-Cong	0	(eight districts)	–1	(six districts)
SL-173	10,355 (4.960%)	5	–10,434 (4.997%)	13,18
NCLCV-Sen	10,355 (4.960%)	5	–10,427 (4.994%)	15
SL-175	4250 (4.885%)	18	–4189 (4.815%)	112
NCLCV-House	4341 (4.990%)	82	–4323 (4.969%)	87

Table 1: Deviations are calculated with respect to the rounded ideal district populations of 745,671 for Congress, 208,788 for Senate, and 86,995 for House.

- **Minority electoral opportunity.** Minority groups’ opportunity to elect candidates of choice is protected by both state and federal law. A detailed assessment of opportunity must hinge not on the demographics of the districts but on electoral history and an assessment of polarization patterns. That is not the focus of the current affidavit. Instead we make the brief note that it is important to avoid the conflation of *majority-minority districts* with *effective districts* for a minority group. An involved analysis of voting patterns—necessarily incorporating both primary and general elections to ensure that candidates of choice can be successfully nominated and elected—will frequently reveal that districts can be effective at demographic levels well below 50% of voting-age population or citizen voting-age population (VAP and CVAP, respectively). For instance, in [3], my co-authors and I drew an illustrative plan for Texas congressional districting in which some parts of the state had districts that were shown to reliably elect Black candidates of choice with BCVP as low as 28.6%; by contrast, there are other parts of Texas where a 40% BCVP district is less consistently effective. In a Louisiana case study, we found somewhat different patterns of human and political geography, producing numerous examples of Congressional-sized districts with 55% BCVP in some parts of the state that are nonetheless marginal in terms of opportunity for Black voters to elect candidates of choice.

In North Carolina, taking the crossover voting patterns of White, Latino, and Asian voters into account, I note that a district with BCVP in the low to mid 30s can often be effective for Black voters—but there is no demographic shortcut to a full examination of primary and general election history.

- **Contiguity.** All six plans are contiguous; for each district, it is possible to transit from any part of the district to any other part through a sequence of census blocks that share boundary segments of positive length. As is traditional in North Carolina, contiguity through water is accepted.

- **Compactness.** The two compactness metrics most commonly appearing in litigation are the *Polsby-Popper score* and the *Reock score*. Polsby-Popper is the name given in redistricting to a metric from ancient mathematics: the isoperimetric ratio comparing a region's area to its perimeter via the formula $4\pi A/P^2$. Higher scores are considered more compact, with circles uniquely achieving the optimum score of 1. Reock is a different measurement of how much a shape differs from a circle: it is computed as the ratio of a region's area to that of its circumcircle, defined as the smallest circle in which the region can be circumscribed. From this definition, it is clear that it too is optimized at a value of 1, which is achieved only by circles.

These scores depend on the contours of a district and have been criticized as being too dependent on map projections or on cartographic resolution [1, 2]. Recently, some mathematicians have argued for using discrete compactness scores, taking into account the units of Census geography from which the district is built. The most commonly cited discrete score for districts is the *cut edges score*, which counts how many adjacent pairs of geographical units receive different district assignments. In other words, cut edges measures the "scissors complexity" of the districting plan: how much work would have to be done to separate the districts from each other? Plans with a very intricate boundary would require many separations. This score improves on the contour-based scores by better controlling for factors like coastline and other natural boundaries, and by focusing on the units actually available to redistricters rather than treating districts like free-form Rorschach blots.

The alternative plans are significantly more compact than the enacted plans in all three compactness metrics.

Compactness

	block cut edges (lower is better)	average Polsby-Popper (higher is better)	average Reock (higher is better)
SL-174	5194	0.303	0.381
NCLCV-Cong	4124	0.383	0.444
SL-173	9702	0.342	0.402
NCLCV-Sen	9249	0.369	0.423
SL-175	16,182	0.351	0.419
NCLCV-House	13,963	0.414	0.456

Table 2: Comparing compactness scores via one discrete and two contour-based metrics.

- **Respect for political subdivisions.** For legislative redistricting, North Carolina has one of the strongest requirements for county consideration of any state in the nation. In my understanding, courts have interpreted the Whole County Provisions as follows.
 - First, if any county is divisible into a whole number of districts that will be within $\pm 5\%$ of ideal population, then it must be subdivided accordingly without districts crossing into other counties.
 - Next, seek any contiguous grouping of two counties that is similarly divisible into a whole number of districts.
 - Repeat for groupings of three, and so on, until all counties are accounted for.

A complete set of solutions is described in detail in the white paper of Mattingly et al.—though with the important caveat that the work "does not reflect... compliance with the Voting Rights Act" [4]. Absent a VRA conflict, the 2020 Decennial Census population data dictates that the North Carolina Senate plan must be decomposed into ten single-district fixed clusters and seven multi-district fixed clusters (comprising 2, 2, 3, 3, 4, 6, and 6

districts, respectively). It has four more areas in which there is a choice of groupings. In all, there are sixteen different possible clusterings for Senate, each comprising 26 county clusters. The House likewise has 11 single-district fixed clusters and 22 multi-district fixed clusters (with two to thirteen districts per cluster), together with three more areas with a choice of groupings. In all, the House has only eight acceptable clusterings, each comprising 40 county clusters. Again, it is important to note that VRA compliance may present a compelling reason to select some clusterings and reject others.

Once clusters have been formed, there are more rules about respecting county lines within clusters. The legal language is again explicit: "[T]he resulting interior county lines created by any such groupings may be crossed or traversed in the creation of districts within said multi-county grouping but only to the extent necessary" to meet the $\pm 5\%$ population standard for districts. To address this, I have counted the *county traversals* in each plan, i.e., the number of times a district crosses between adjacent counties within a grouping.

Table 3 reflects the county integrity metric that is most relevant at each level: the enacted congressional plan splits 11 counties into 25 pieces while the alternative plan splits 13, but splits no county three ways. (The enacted plans unnecessarily split three counties into three pieces.) In the legislative plans, the law specifies traversals as the fundamental integrity statistic.

The alternative plans are comparable to the enacted plans, or sometimes far superior, in each of these key metrics regarding preservation of political boundaries.

County and municipality preservation

# county pieces		# traversals	
SL-174	25	SL-173	97
NCLCV-Cong	26	NCLCV-Sen	89
		SL-175	69
		NCLCV-House	66

# municipal pieces	
SL-174	90
NCLCV-Cong	58
SL-173	152
NCLCV-Sen	125
SL-175	292
NCLCV-House	201

Table 3: Comparing the plans' conformance to political boundaries.

I will briefly mention several additional redistricting principles.

- **Communities of interest.** In North Carolina, there was no sustained effort by the state or by community groups to formally collect community of interest (COI) maps, to my knowledge. Without this, it is difficult to produce a suitable metric.
- **Cores of prior districts.** In some states, there is statutory guidance to seek districting plans that preserve the cores of prior districts. In North Carolina, this is not a factor in the constitution, in statute, or in case law. In addition, attention to core preservation would be prohibitively difficult in the Senate and House because of the primacy of the Whole County Provisions, which forces major changes to the districts simply as a consequence of fresh population numbers.

- **Incumbent pairing.** In 2017, the North Carolina legislative redistricting committee listed "incumbency protection" as a goal in their itemization of principles. In 2021, this was softened to the statement that "Member residence may be considered" in the drawing of districts. I have counted the districts in each plan that contain more than one incumbent address; these are sometimes colorfully called "double-bunked" districts. For this statistic, it is not entirely clear whether a high or low number is preferable. When a plan remediates a gerrymandered predecessor, we should not be surprised if it ends up pairing numerous incumbents.

Double-bunking

	# districts pairing incumbents
SL-174	3
NCLCV-Cong	1
SL-173	6
NCLCV-Sen	9
SL-175	7
NCLCV-House	15

Table 4: For Congress and Senate, the enacted and alternative plans are comparable; at the House level, the alternative plan has more double-bunking. *Note: These numbers were calculated using the most accurate incumbent addresses that have been provided to me.*

3 Partisan fairness

3.1 Abstract partisan fairness

There are many notions of partisan fairness that can be found in the scholarly literature and in redistricting practitioner guides and software. Most of them are numerical, in the sense that they address *how a certain share of the vote should be translated to a share of the seats* in a state legislature or Congressional delegation.

The numerical notions of partisan fairness all tend to agree on one central point: an electoral climate with a 50-50 split in partisan preference should produce a roughly 50-50 representational split. North Carolina voting has displayed a partisan split staying consistently close to even between the two major parties over the last ten years, but the plans released by the General Assembly after the 2010 census were very far from realizing the ideal of converting even voting to even representation. This time, with a 14th seat added to North Carolina's apportionment, an exactly even seat outcome is possible. But the new enacted plans, like the plans from ten years ago, are not conducive to even representation.

3.2 Geography and fairness

However, some scholars have argued that this ideal (that even vote preferences should translate to even representation) ignores the crucial *political geography*—the location of votes for each party, and not just the aggregate preferences, has a major impact on redistricting outcomes. In [5], my co-authors and I gave a vivid demonstration of the impacts of political geography in Massachusetts: we showed that for a ten-year span of observed voting patterns, even though Republicans tended to get over one-third of the statewide vote, it was impossible to draw a single Congressional district with a Republican majority. That is, the geography of Massachusetts Republicans locked them out of Congressional representation. It is therefore not reasonable to charge the Massachusetts legislature with gerrymandering for having produced maps which yielded all-Democratic delegations; they could not have done otherwise.

In North Carolina, this is not the case. The alternative plans demonstrate that it is possible to produce maps that give the two major parties a roughly equal opportunity to elect their candidates. These plans are just examples among many thousands of plausible maps that convert voter preferences to far more even representation by party. In Congressional redistricting, the geography is easily conducive to a seat share squarely in line with the vote share. In Senate and House plans, even following the strict detail of the Whole County Provisions, there are likewise many alternatives giving a seat share for each party that falls, in aggregate, within a few percentage points of the vote share across a large set of elections.

The clear conclusion is that the political geography of North Carolina today does not obstruct the selection of a map that treats the parties equally and fairly.

3.3 Translating votes to seats

The enacted plans behave as though they are built to resiliently safeguard electoral advantage for Republican candidates. We can examine this effect without invoking assumptions like "uniform partisan swing" that impose counterfactual voting conditions; instead, we will use the rich observed dataset of 52 statewide party-ID general elections in North Carolina in the last ten years. 29 of these are elections for Council of State (ten offices elected three times, with the Attorney General race uncontested in 2012), three presidential races, three for U.S. Senate, and 17 judicial races since mid-decade, when those became partisan contests. See Table 6 for more detail on the election dataset.

I will sometimes focus on the smaller set of better-known "up-ballot" races: in order, the first five to appear on the ballot are the contests for President, U.S. Senator, Governor, Lieutenant Governor, and Attorney General. Together these occurred 14 times in the last Census cycle.

	Up-ballot generals (14)		All generals (52)	
	D vote share	D seat share	D vote share	D seat share
SL-174		.2908		.3118
NCLCV-Cong	.4883	.4796	.4911	.4931
SL-173		.3957		.4065
NCLCV-Sen	.4883	.4557	.4911	.4592
SL-175		.3994		.4080
NCLCV-House	.4883	.4649	.4911	.4684

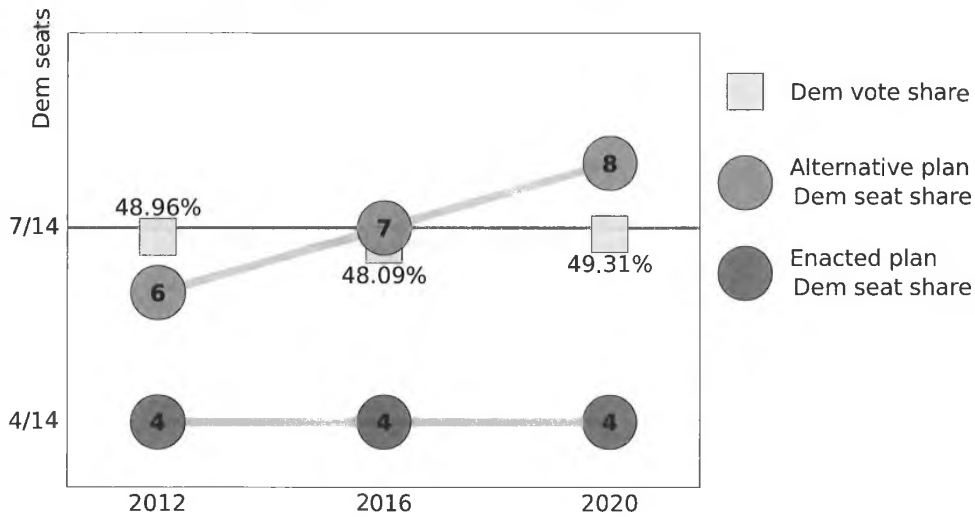
Table 5: Comparing overall fidelity of representation to the voting preferences of the electorate. Vote shares are reported with respect to the major-party vote total.

To understand how the enacted plans create major shortfalls for Democratic representation, we will overlay the plans with voting patterns from individual elections in the past Census cycle. As we will see, the enacted Congressional plan (SL-174) shows a remarkable lack of responsiveness, giving 10–4 partisan outcomes across a wide range of recent electoral conditions, meaning that 10 Republicans and only 4 Democrats would represent North Carolina in Congress. The alternative plan (NCLCV-Cong) is far more faithful to the vote share, far more responsive, and tends to award more seats to the party with more votes.

The top of Figure 2 shows this dynamic in the three Presidential contests in the last Census cycle, with a Democratic vote share (pink box) between 48% and 50% of the major-party total each time. For a contest that is so evenly divided, we would expect a fair map to have 6, 7, or 8 out of 14 districts favoring each party. The alternative Congressional map NCLCV-Cong does just that, while the enacted plan SL-174 has just 4 out of 14 Democratic-majority districts each time (green and maroon circles). The alternative plan is far more successful at reflecting the even split of voter preferences. Below the initial explainer, simplified versions of the same type of graphic are presented for all five up-ballot races. Figure 3 compares legislative maps in the same fashion. Next, Figure 4 returns to the full 52-election dataset to give the big picture of entrenched partisan advantage in the enacted plans.

Congressional plan comparison in Presidential elections

Does even voting translate to even representation?



Congressional plan comparison across up-ballot races

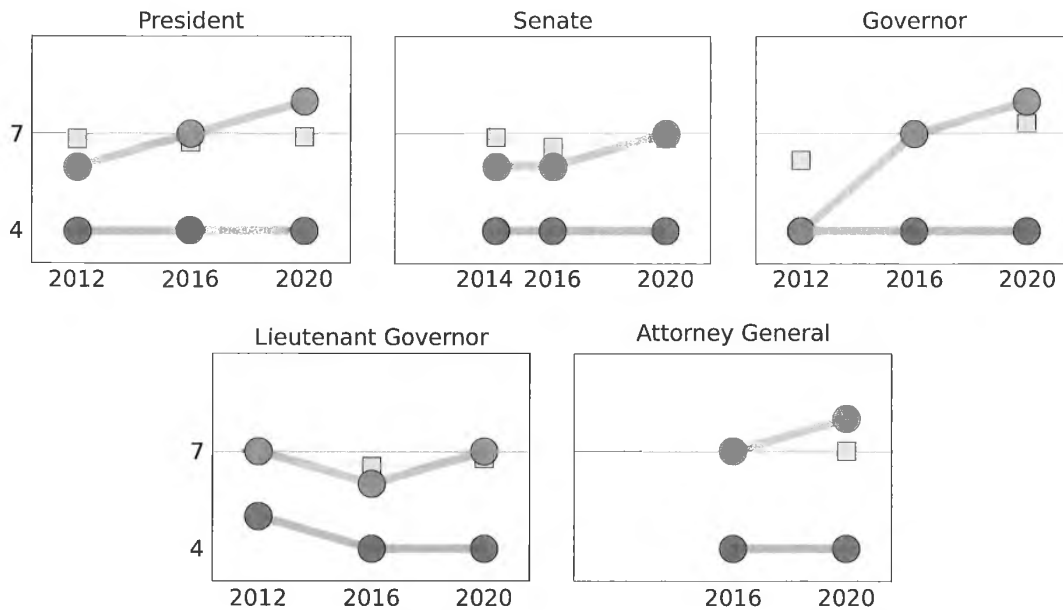


Figure 2: For up-ballot general election contests across the previous Census cycle, we can compare the seat share under the enacted Congressional plan SL-174 (maroon) and the seat share under the alternative Congressional plan NCLCV-Cong (green) to the vote share (light blue) for Democratic candidates. At top is a detailed look at the presidential contests; this is repeated below, alongside the other four up-ballot offices. The 50% line is marked each time.

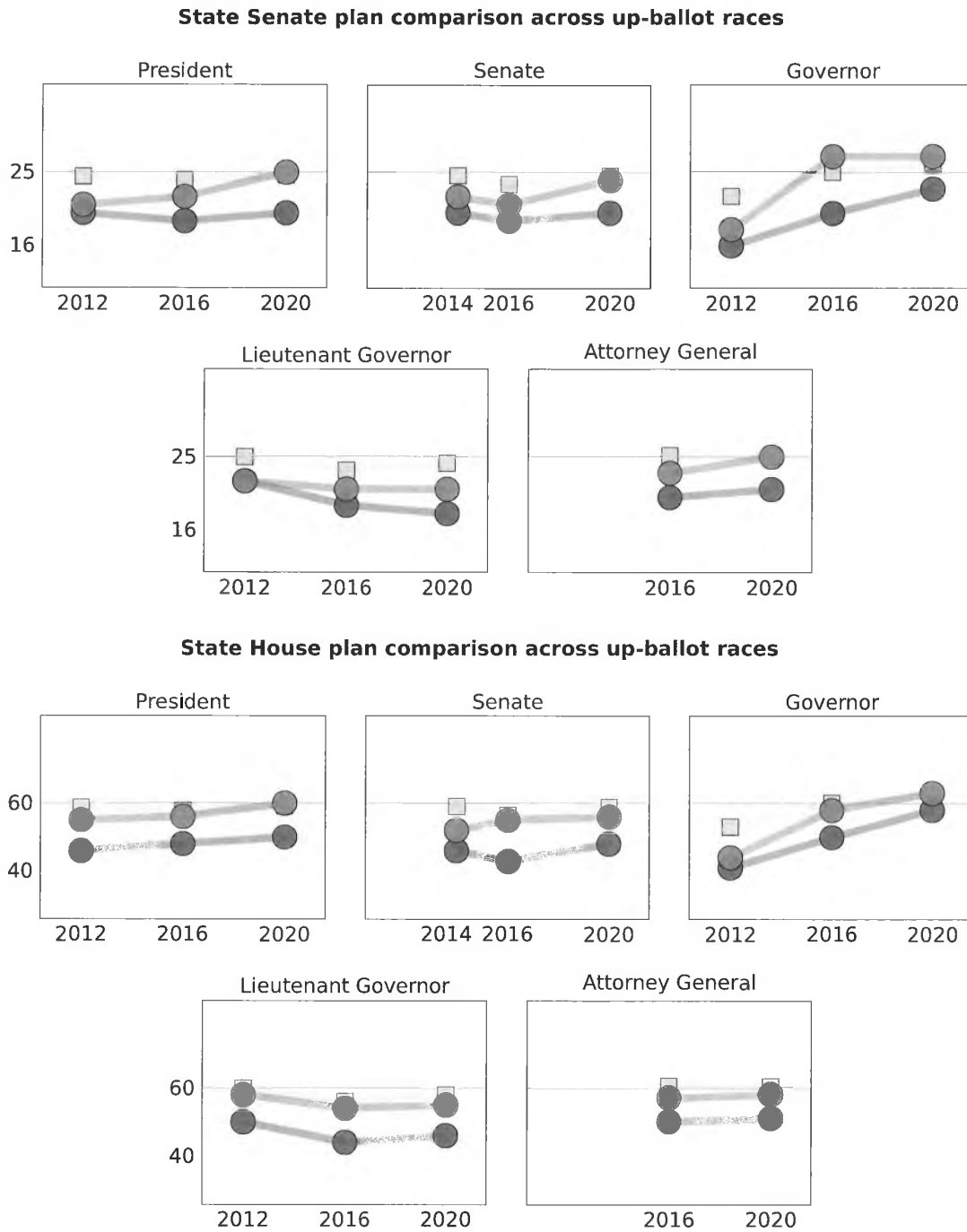


Figure 3: Legislative plans tested against voting patterns from up-ballot elections. The enacted plans SL-173 and SL-175 are shown in maroon. The alternative plans NCLCV-Sen and NCLCV-House, in green, have seat shares tracking much closer to the nearly even voting preferences.

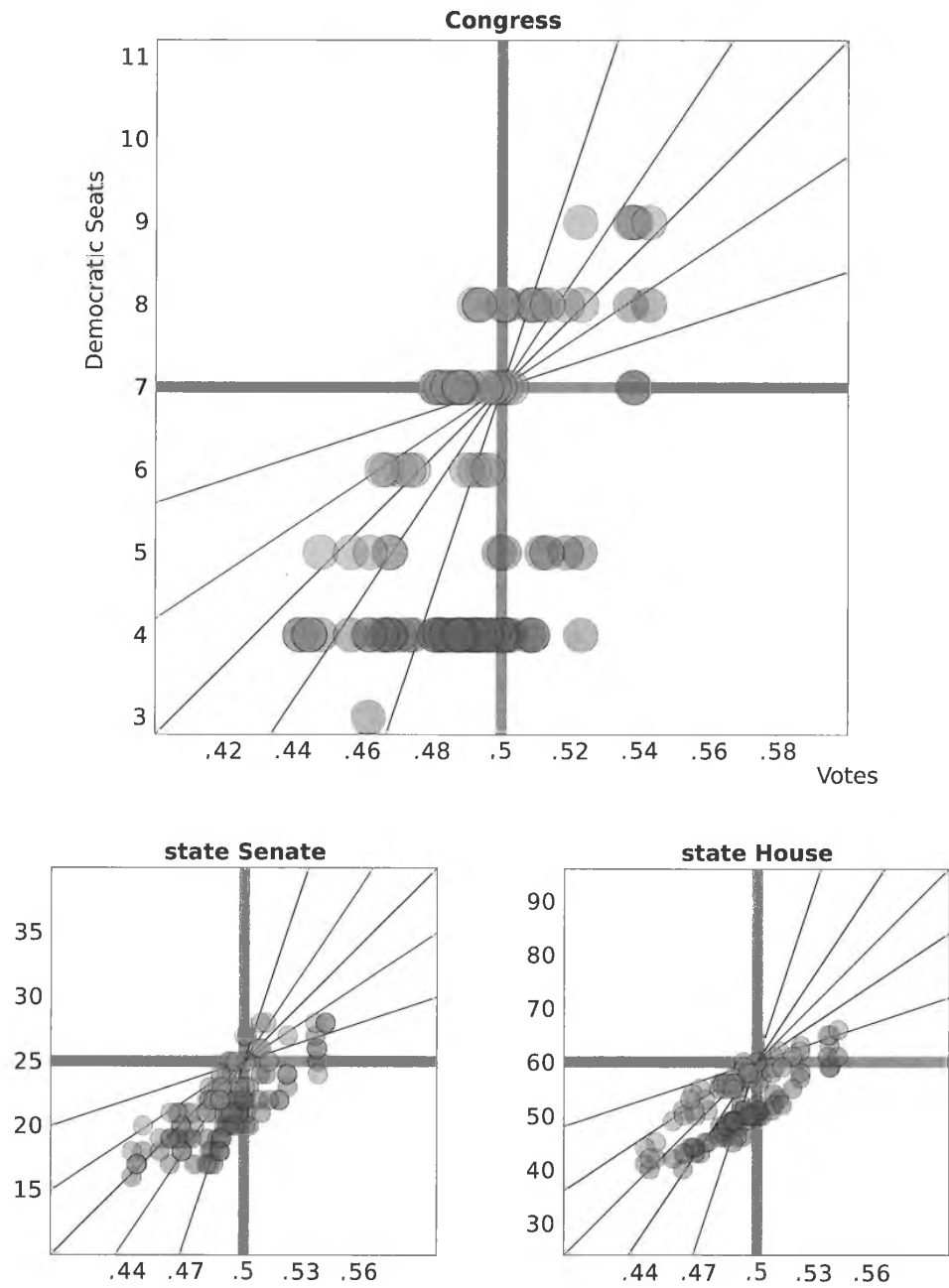


Figure 4: On a seats-vs.-votes plot, the election results for the six maps are shown for 52 general election contests in the last decade; each colored dot is plotted as the coordinate pair (vote share, seat share). The diagonals show various lines of *responsiveness* that pivot around the central point of fairness: half of the votes securing half of the seats. The Congressional comparison is at top, followed by Senate and House. The enacted plans are shown in maroon and the alternative plans in green.

3.4 Swing districts and competitive contests

Another way to understand the electoral properties of districting plans is to investigate how many districts always give the same partisan result over a suite of observed electoral conditions, and how many districts can "swing" between the parties. Figure 5 compares the six plans across the up-ballot elections. The enacted plans lock in large numbers of always-Republican seats. In the Senate and House, nearly half the seats are locked down for Republicans. In the Congressional plan, it's well over half. This provides another view from which the NCLCV plans provide attractive alternatives.

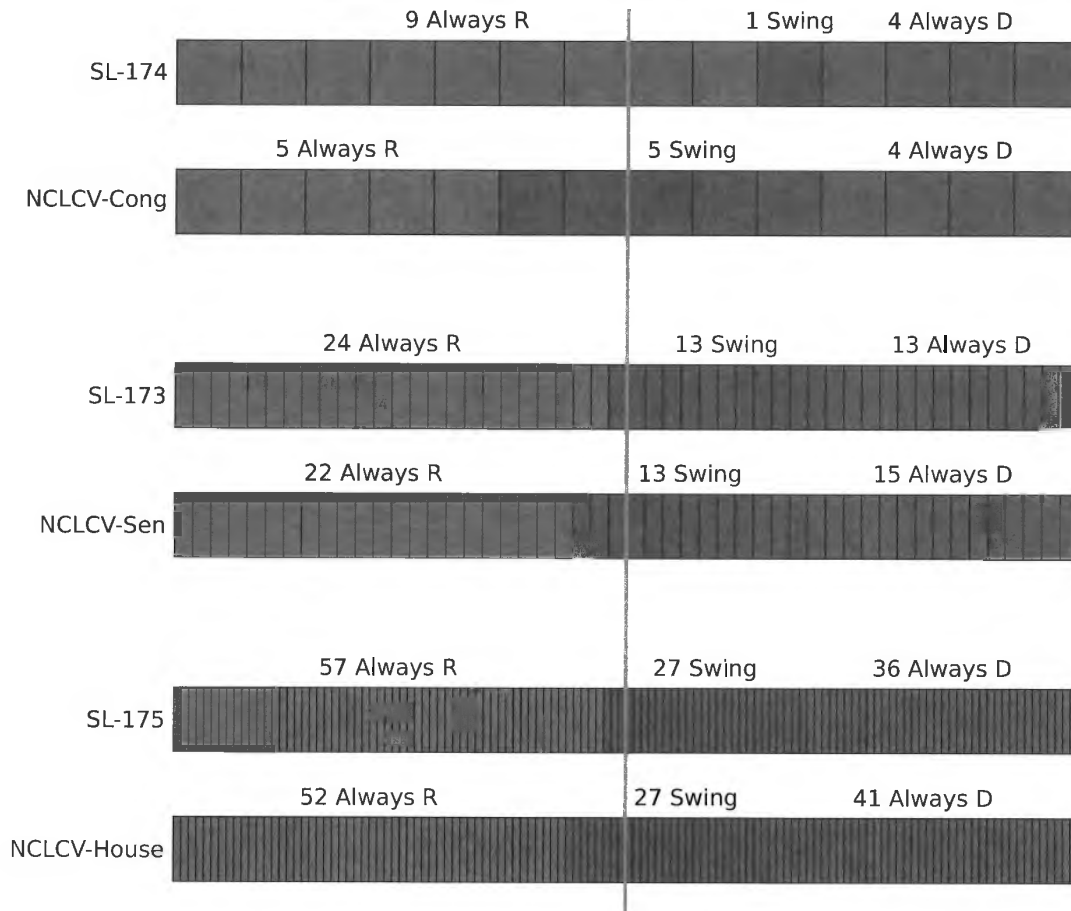


Figure 5: These visuals show the breakdown of seats that always have a Republican winner, always have a Democratic winner, or are sometimes led by each party across the 14 up-ballot elections over the previous Census cycle. The 50-50 split is marked.

One more measure of partisan fairness, frequently referenced in the public discourse, is the tendency of a districting plan to promote close or competitive contests. We close with a comparison of the enacted and alternative plans that displays the number of times across the full dataset of 52 elections that a contest had a partisan margin of closer than 10 points, 6 points, or 2 points, respectively. This can occur up to $14 \cdot 52 = 728$ times in Congressional maps, $50 \cdot 52 = 2600$ times in state Senate maps, and $120 \cdot 52 = 6240$ times in state House

maps. The figures below show horizontal rules at every 10% interval of the total number of possible competitive contests; we can see, for instance, that the alternative Congressional plan has contests within a 10-point margin more than 40% of the time.

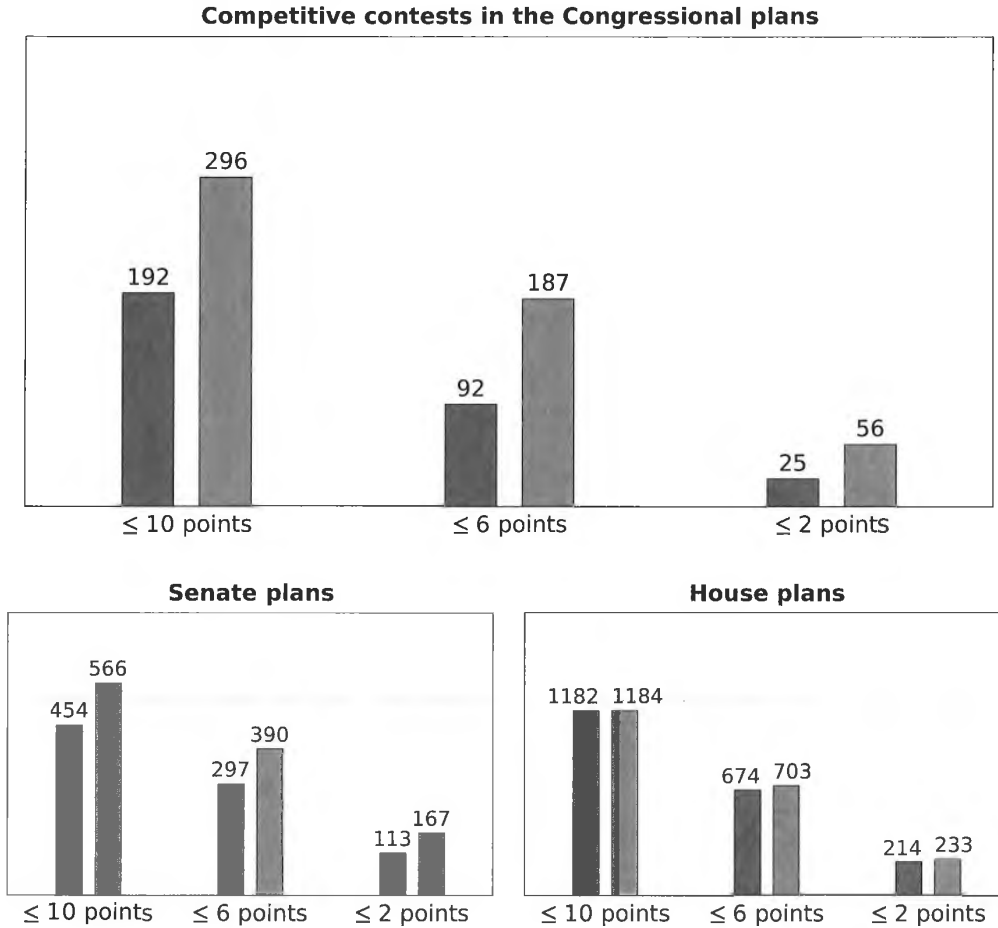


Figure 6: These bar graphs show the number of competitive contests for the enacted plans (maroon) and the alternative plans (green). In each plot, we consider increasingly restrictive definitions of "competitive" from left to right, counting districts in which the major-party vote split is closer than 45-55, 47-53, and 49-51, respectively.

4 Conclusion

North Carolina is a very "purple" state. In 38 out of the 52 contests in our dataset, the statewide partisan outcome is within a 6-point margin: 47-53 or closer. We can make a striking observation by laying our six plans over the vote patterns.

	D Vote Share	SL-174	NCLCV-Cong	SL-173	NCLCV-Sen	SL-175	NCLCV-House
GOV12	0.4418	4	4	16	18	41	44
AGC16	0.4444	4	4	17	17	40	42
LAC16	0.4475	4	5	18	20	42	45
JHU16	0.4563	4	5	18	19	42	49
AGC20	0.4615	3	4	17	19	40	51
JZA16	0.4619	4	5	19	21	43	50
JDI16	0.4653	4	6	19	21	44	53
LTG16	0.4665	4	6	19	21	44	54
LAC12	0.4674	4	5	20	20	44	51
AGC12	0.4678	4	5	18	18	43	50
SEN16	0.4705	4	6	19	21	43	55
TRS16	0.4730	4	6	19	21	45	53
TRS20	0.4743	4	6	17	20	45	51
JA620	0.4806	4	7	17	21	46	55
PRS16	0.4809	4	7	19	22	48	56
JA420	0.4822	4	7	17	22	47	56
INC20	0.4823	4	7	18	23	47	56
LTG20	0.4836	4	7	18	21	46	55
JA720	0.4842	4	7	17	22	48	56
SUP20	0.4862	4	7	19	23	49	56
JA520	0.4874	4	7	18	22	49	57
JA218	0.4876	4	7	18	22	45	55
JS420	0.4879	4	7	19	24	49	56
J1320	0.4885	4	7	19	23	49	56
PRS12	0.4897	4	6	20	21	46	55
SEN20	0.4910	4	7	20	24	48	56
LAC20	0.4918	4	8	21	25	51	58
SEN14	0.4919	4	6	20	22	46	52
PRS20	0.4932	4	8	20	25	50	60
JS220	0.4934	4	8	21	24	51	59
SUP16	0.4941	4	6	22	23	49	57
JS118	0.4955	4	7	20	25	50	58
INC16	0.4960	4	6	22	22	50	57
JST16	0.4976	4	7	21	23	50	58
LTG12	0.4992	5	7	22	22	50	58
JS120	0.5000	4	8	22	27	52	60
AUD16	0.5007	5	8	22	23	51	56
GOV16	0.5011	4	7	20	27	50	58
ATG20	0.5013	4	8	21	25	51	58
ATG16	0.5027	4	7	20	23	50	57
JA118	0.5078	4	8	22	26	51	58
AUD20	0.5088	4	8	24	28	54	61
JA318	0.5091	4	8	21	26	52	59
SOS20	0.5116	5	8	24	28	53	62
JGE16	0.5131	5	8	22	25	52	59
INC12	0.5186	5	8	22	22	55	61
SOS16	0.5226	5	9	24	24	57	62
GOV20	0.5229	4	8	23	27	58	63
AUD12	0.5371	8	9	27	28	61	65
SOS12	0.5379	7	9	26	26	59	63
TRS12	0.5383	7	9	25	24	59	65
SUP12	0.5424	8	9	28	28	61	66

Table 6: 52 general elections, sorted from lowest to highest Democratic share. Election codes have a three-character prefix and a two-digit suffix designating the office and the election year, respectively. AGC = Agriculture Commissioner; ATG = Attorney General; AUD = Auditor; GOV = Governor; INC = Insurance Commissioner; LAC = Labor Commissioner; PRS = President; SEN = Senator; SOS = Secretary of State; SUP = Superintendent of Schools; TRS = Treasurer. The prefix JA* refers to judicial elections to the Court of Appeals (so that, for instance, JA118 is the election to the Seat 1 on the Court of Appeals in 2018), those beginning with JS* refer to elections to the state Supreme Court. All other J* prefixes refer to an election to replace a specific judge on the Court of Appeals.

The three enacted plans combine with those 38 relatively even vote patterns to produce 114 outcomes. Every single pairing of an enacted plan with a close statewide contest—a complete sweep of 114 opportunities—gives an *outright Republican majority* of seats. All three enacted plans will lock in an extreme, resilient, and unnecessary advantage for one party.

By every measure considered above that corresponds to a clear legal or good-government redistricting goal or value, the alternative plans meet or exceed the performance of the enacted plans. It is therefore demonstrated to be possible, without any cost to the redistricting principles in play, to select maps that are far fairer to the voters of North Carolina.

References

- [1] Assaf Bar-Natan, Lorenzo Najt, and Zachary Schutzmann, *The gerrymandering jumble: map projections permute districts' compactness scores*. Cartography and Geographic Information Science, Volume 47, Issue 4, 2020, 321–335.
- [2] Richard Barnes and Justin Solomon, *Gerrymandering and Compactness: Implementation Flexibility and Abuse*. Political Analysis, Volume 29, Issue 4, October 2021, 448–466.
- [3] Amariah Becker, Moon Duchin, Dara Gold, and Sam Hirsch, *Computational redistricting and the Voting Rights Act*. Election Law Journal. Available at <https://www.liebertpub.com/doi/epdf/10.1089/elj.2020.0704>
- [4] Christopher Cooper, Blake Esselstyn, Gregory Herschlag, Jonathan Mattingly, and Rebecca Tippet, *NC General Assembly County Clusterings from the 2020 Census*. <https://sites.duke.edu/quantifyinggerrymandering/files/2021/08/countyClusters2020.pdf>
- [5] Moon Duchin, Taissa Gladkova, Eugene Henninger-Voss, Heather Newman, and Hannah Wheelen, *Locating the Representational Baseline: Republicans in Massachusetts*. Election Law Journal, Volume 18, Number 4, 2019, 388–401.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of November, 2021.

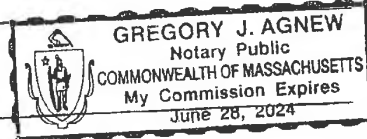
Moon Duchin
Moon Duchin

Sworn and subscribed before me
this the 16 of November, 2021.

M. J. Agnew
Notary Public

Name: _____

My Commission Expires: _____



Moon Duchin

moon.duchin@tufts.edu · mduchin-math.tufts.edu
Mathematics · STS · Tisch College of Civic Life | Tufts University

Education

University of Chicago Mathematics Advisor: Alex Eskin Dissertation: <i>Geodesics track random walks in Teichmüller space</i>	MS 1999, PhD 2005
Harvard University Mathematics and Women's Studies	BA 1998

Appointments

Tufts University Professor of Mathematics Assistant Professor, Associate Professor <i>Director</i> Program in Science, Technology, & Society (on leave 2018–2019) <i>Principal Investigator</i> MGCG Redistricting Lab <i>Senior Fellow</i> Tisch College of Civic Life	2021— 2011–2021 2015–2021 2017— 2017—
University of Michigan Assistant Professor (postdoctoral)	2008–2011
University of California, Davis NSF VIGRE Postdoctoral Fellow	2005–2008

Research Interests

Data science for civil rights, computation and governance, elections, geometry and redistricting.
Science, technology, and society, science policy, technology and law.
Random walks and Markov chains, random groups, random constructions in geometry.
Large-scale geometry, metric geometry, isoperimetric inequalities.
Geometric group theory, growth of groups, nilpotent groups, dynamics of group actions.
Geometric topology, hyperbolicity, Teichmüller theory.

Awards & Distinctions

Research Professor - MSRI Program in Analysis and Geometry of Random Spaces	Spring 2022
Guggenheim Fellow	2018
Radcliffe Fellow - Evelyn Green Davis Fellowship	2018–2019
Fellow of the American Mathematical Society	elected 2017
NSF C-ACCEL (PI) - Harnessing the Data Revolution: Network science of Census data	2019–2020
NSF grants (PI) - CAREER grant and three standard Topology grants	2009–2022
Professor of the Year , Tufts Math Society	2012–2013
AAUW Dissertation Fellowship	2004–2005
NSF Graduate Fellowship	1998–2002
Lawrence and Josephine Graves Prize for Excellence in Teaching (U Chicago)	2002
Robert Fletcher Rogers Prize (Harvard Mathematics)	1995–1996

Mathematics Publications & Preprints

The (homological) persistence of gerrymandering

Foundations of Data Science, online first. (with Thomas Needham and Thomas Weighill)

You can hear the shape of a billiard table: Symbolic dynamics and rigidity for flat surfaces

Commentarii Mathematici Helvetici, to appear. arXiv:1804.05690

(with Viveka Erlandsson, Christopher Leininger, and Chandrika Sadanand)

Conjugation curvature for Cayley graphs

Journal of Topology and Analysis, online first. (with Assaf Bar-Natan and Robert Kropholler)

A reversible recombination chain for graph partitions

Preprint. (with Sarah Cannon, Dana Randall, and Parker Rule)

Recombination: A family of Markov chains for redistricting

Harvard Data Science Review. Issue 3.1, Winter 2021. online. (with Daryl DeFord and Justin Solomon)

Census TopDown: The impact of differential privacy on redistricting

2nd Symposium on Foundations of Responsible Computing (FORC 2021), 5:1–5:22. online.

(with Aloni Cohen, JN Matthews, and Bhushan Suwal)

Stars at infinity in Teichmüller space

Geometriae Dedicata, Volume 213, 531–545 (2021). (with Nate Fisher) arXiv:2004.04321

Random walks and redistricting: New applications of Markov chain Monte Carlo

(with Daryl DeFord) For edited volume, Political Geometry. Under contract with Birkhäuser.

Mathematics of nested districts: The case of Alaska

Statistics and Public Policy. Vol 7, No 1 (2020), 39–51. (w/ Sophia Caldera, Daryl DeFord, Sam Gutekunst, & Cara Nix)

A computational approach to measuring vote elasticity and competitiveness

Statistics and Public Policy. Vol 7, No 1 (2020), 69–86. (with Daryl DeFord and Justin Solomon)

The Heisenberg group is pan-rational

Advances in Mathematics **346** (2019), 219–263. (with Michael Shapiro)

Random nilpotent groups I

IMRN, Vol 2018, Issue 7 (2018), 1921–1953. (with Matthew Cordes, Yen Duong, Meng-Che Ho, and Ayla Sánchez)

Hyperbolic groups

chapter in *Office Hours with a Geometric Group Theorist*, eds. M. Clay, D. Margalit, Princeton U Press (2017), 177–203.

Counting in groups: Fine asymptotic geometry

Notices of the American Mathematical Society **63**, No. 8 (2016), 871–874.

A sharper threshold for random groups at density one-half

Groups, Geometry, and Dynamics **10**, No. 3 (2016), 985–1005.

(with Katarzyna Jankiewicz, Shelby Kilmer, Samuel Lelièvre, John M. Mackay, and Ayla Sánchez)

Equations in nilpotent groups

Proceedings of the American Mathematical Society **143** (2015), 4723–4731. (with Hao Liang and Michael Shapiro)

Statistical hyperbolicity in Teichmüller space

Geometric and Functional Analysis, Volume 24, Issue 3 (2014), 748–795. (with Howard Masur and Spencer Dowdall)

Fine asymptotic geometry of the Heisenberg group

Indiana University Mathematics Journal **63** No. 3 (2014), 885–916. (with Christopher Mooney)

Pushing fillings in right-angled Artin groups

Journal of the LMS, Vol 87, Issue 3 (2013), 663–688. (with Aaron Abrams, Noel Brady, Pallavi Dani, and Robert Young)

Spheres in the curve complex

In the Tradition of Ahlfors and Bers VI, Contemp. Math. **590** (2013), 1–8. (with Howard Masur and Spencer Dowdall)

The sprawl conjecture for convex bodies

Experimental Mathematics, Volume 22, Issue 2 (2013), 113–122. (with Samuel Lelièvre and Christopher Mooney)

Filling loops at infinity in the mapping class group

Michigan Math. J., Vol 61, Issue 4 (2012), 867–874. (with Aaron Abrams, Noel Brady, Pallavi Dani, and Robert Young)

The geometry of spheres in free abelian groups

Geometriae Dedicata, Volume 161, Issue 1 (2012), 169–187. (with Samuel Lelièvre and Christopher Mooney)

Statistical hyperbolicity in groups

Algebraic and Geometric Topology **12** (2012) 1–18. (with Samuel Lelièvre and Christopher Mooney)

Length spectra and degeneration of flat metrics

Inventiones Mathematicae, Volume 182, Issue 2 (2010), 231–277. (with Christopher Leininger and Kasra Rafi)

Divergence of geodesics in Teichmüller space and the mapping class group

Geometric and Functional Analysis, Volume 19, Issue 3 (2009), 722–742. (with Kasra Rafi)

Curvature, stretchiness, and dynamics

In the Tradition of Ahlfors and Bers IV, Contemp. Math. **432** (2007), 19–30.

Geodesics track random walks in Teichmüller space

PhD Dissertation, University of Chicago 2005.

Science, Technology, Law, and Policy Publications & Preprints

Models, Race, and the Law

Yale Law Journal Forum, Vol. 130 (March 2021). Available online. (with Doug Spencer)

Computational Redistricting and the Voting Rights Act

Election Law Journal, Available online. (with Amariah Becker, Dara Gold, and Sam Hirsch)

Discrete geometry for electoral geography

Preprint. (with Bridget Eileen Tenner) arXiv:1808.05860

Implementing partisan symmetry: Problems and paradoxes

Political Analysis, to appear. (with Daryl DeFord, Natasha Dhamankar, Mackenzie McPike, Gabe Schoenbach, and Ki-Wan Sim) arXiv:2008.06930

Clustering propensity: A mathematical framework for measuring segregation

Preprint. (with Emilia Alvarez, Everett Meike, and Marshall Mueller; appendix by Tyler Piazza)

Locating the representational baseline: Republicans in Massachusetts

Election Law Journal, Volume 18, Number 4, 2019, 388–401.

(with Taissa Gladkova, Eugene Henninger-Voss, Ben Klingensmith, Heather Newman, and Hannah Wheelen)

Redistricting reform in Virginia: Districting criteria in context

Virginia Policy Review, Volume XII, Issue II, Spring 2019, 120–146. (with Daryl DeFord)

Geometry v. Gerrymandering

The Best Writing on Mathematics 2019, ed. Mircea Pitici. Princeton University Press.
reprinted from Scientific American, November 2018, 48–53.

Gerrymandering metrics: How to measure? What's the baseline?

Bulletin of the American Academy for Arts and Sciences, Vol. LXII, No. 2 (Winter 2018), 54–58.

Rebooting the mathematics of gerrymandering: How can geometry track with our political values?

The Conversation (online magazine), October 2017. (with Peter Levine)

A formula goes to court: Partisan gerrymandering and the efficiency gap

Notices of the American Mathematical Society **64** No. 9 (2017), 1020–1024. (with Mira Bernstein)

International mobility and U.S. mathematics

Notices of the American Mathematical Society **64**, No. 7 (2017), 682–683.

Graduate Advising in Mathematics

Nate Fisher (PhD 2021), Sunrose Shrestha (PhD 2020), Ayla Sánchez (PhD 2017),
Kevin Buckles (PhD 2015), Mai Mansouri (MS 2014)

Outside committee member for Chris Coscia (PhD 2020), Dartmouth College

Postdoctoral Advising in Mathematics

Principal supervisor Thomas Weighill (2019–2020)

Co-supervisor Daryl DeFord (MIT 2018–2020), Rob Kropholler (2017–2020), Hao Liang (2013–2016)

Teaching

Courses Developed or Customized

Mathematics of Social Choice | sites.tufts.edu/socialchoice

Voting theory, impossibility theorems, redistricting, theory of representative democracy, metrics of fairness.

History of Mathematics | sites.tufts.edu/histmath

Social history of mathematics, organized around episodes from antiquity to present. Themes include materials and technologies of creation and dissemination, axioms, authority, credibility, and professionalization. In-depth treatment of mathematical content from numeration to cardinal arithmetic to Galois theory.

Reading Lab: Mathematical Models in Social Context | sites.tufts.edu/models

One hr/wk discussion seminar of short but close reading on topics in mathematical modeling, including history of psychometrics; algorithmic bias; philosophy of statistics; problems of model explanation and interpretation.

Geometric Literacy

Module-based graduate topics course. Modules have included: p -adic numbers, hyperbolic geometry, nilpotent geometry, Lie groups, convex geometry and analysis, the complex of curves, ergodic theory, the Gauss circle problem.

Markov Chains (graduate topics course)

Teichmüller Theory (graduate topics course)

Fuchsian Groups (graduate topics course)

Continued Fractions and Geometric Coding (undergraduate topics course)

Mathematics for Elementary School Teachers

Standard Courses

Discrete Mathematics, Calculus I-II-III, Intro to Proofs, Linear Algebra, Complex Analysis, Differential Geometry, Abstract Algebra, Graduate Real Analysis, Mathematical Modeling and Computation

Weekly Seminars Organized

- Geometric Group Theory and Topology
- Science, Technology, and Society Lunch Seminar

Selected Talks and Lectures

Distinguished Plenary Lecture 75th Anniversary Meeting of Canadian Mathematical Society, Ottawa, Ontario	June 2021 <i>online (COVID)</i>
BMC/BAMC Public Lecture Joint British Mathematics/Applied Mathematics Colloquium, Glasgow, Scotland	April 2021 <i>online (COVID)</i>
AMS Einstein Public Lecture in Mathematics Southeastern Sectional Meeting of the AMS, Charlottesville, VA	[March 2020] <i>postponed</i>
Gerald and Judith Porter Public Lecture AMS-MAA-SIAM, Joint Mathematics Meetings, San Diego, CA	January 2018
Mathematical Association of America Distinguished Lecture MAA Carriage House, Washington, DC	October 2016
American Mathematical Society Invited Address AMS Eastern Sectional Meeting, Brunswick, ME	September 2016

Named University Lectures

- Parsons Lecture UNC Asheville	October 2020
- Loeb Lectures in Mathematics Washington University in St. Louis	[March 2020]
- Math, Stats, CS, and Society Macalester College	October 2019
- MRC Public Lecture Stanford University	May 2019
- Freedman Memorial Colloquium Boston University	March 2019
- Julian Clancy Frazier Colloquium Lecture U.S. Naval Academy	January 2019
- Barnett Lecture University of Cincinnati	October 2018
- School of Science Colloquium Series The College of New Jersey	March 2018
- Kieval Lecture Cornell University	February 2018
- G. Milton Wing Lectures University of Rochester	October 2017
- Norman Johnson Lecture Wheaton College	September 2017
- Dan E. Christie Lecture Bowdoin College	September 2017

Math/Computer Science Department Colloquia

- Reed College	Dec 2020	- Université de Neuchâtel	Jun 2016
- Georgetown (CS)	Sept 2020	- Brandeis University	Mar 2016
- Santa Fe Institute	July 2020	- Swarthmore College	Oct 2015
- UC Berkeley	Sept 2018	- Bowling Green	May 2015
- Brandeis-Harvard-MIT-NEU	Mar 2018	- City College of New York	Feb 2015
- Northwestern University	Oct 2017	- Indiana University	Nov 2014
- University of Illinois	Sept 2017	- the Technion	Oct 2014
- University of Utah	Aug 2017	- Wisconsin-Madison	Sept 2014
- Wesleyan	Dec 2016	- Stony Brook	March 2013
- Worcester Polytechnic Inst.	Dec 2016		

Minicourses

- Integer programming and combinatorial optimization (two talks) | Georgia Tech May 2021
- Workshop in geometric topology (main speaker, three talks) | Provo, UT June 2017
- Growth in groups (two talks) | MSRI, Berkeley, CA August 2016
- Hyperbolicity in Teichmüller space (three talks) | Université de Grenoble May 2016
- Counting and growth (four talks) | IAS Women's Program, Princeton May 2016
- Nilpotent groups (three talks) | Seoul National University October 2014
- Sub-Finsler geometry of nilpotent groups (five talks) | Galatasaray Univ., Istanbul April 2014

Science, Technology, and Society

- The Mathematics of Accountability | Sawyer Seminar, Anthropology, Johns Hopkins February 2020
- STS Circle | Harvard Kennedy School of Government September 2019
- Data, Classification, and Everyday Life Symposium | Rutgers Center for Cultural Analysis January 2019
- Science Studies Colloquium | UC San Diego January 2019
- Arthur Miller Lecture on Science and Ethics | MIT Program in Science, Tech, and Society November 2018

Data Science, Computer Science, Quantitative Social Science

- Data Science for Social Good Workshop (DS4SG) | Georgia Tech (virtual) November 2020
- Privacy Tools Project Retreat | Harvard (virtual) May 2020
- Women in Data Science Conference | Microsoft Research New England March 2020
- Quantitative Research Methods Workshop | Yale Center for the Study of American Politics February 2020
- Societal Concerns in Algorithms and Data Analysis | Weizmann Institute December 2018
- Quantitative Collaborative | University of Virginia March 2018
- Quantitative Social Science | Dartmouth College September 2017
- Data for Black Lives Conference | MIT November 2017

Political Science, Geography, Law, Democracy, Fairness

- The Long 19th Amendment: Women, Voting, and American Democracy | Radcliffe Institute Nov-Dec 2020
- "The New Math" for Civil Rights | Social Justice Speaker Series, Davidson College November 2020
- Math, Law, and Racial Fairness | Justice Speaker Series, University of South Carolina November 2020
- Voting Rights Conference | Northeastern Public Interest Law Program September 2020
- Political Analysis Workshop | Indiana University November 2019
- Program in Public Law Panel | Duke Law School October 2019
- Redistricting 2021 Seminar | University of Chicago Institute of Politics May 2019
- Geography of Redistricting Conference Keynote | Harvard Center for Geographic Analysis May 2019
- Political Analytics Conference | Harvard University November 2018
- Cyber Security, Law, and Society Alliance | Boston University September 2018
- Clough Center for the Study of Constitutional Democracy | Boston College November 2017
- Tech/Law Colloquium Series | Cornell Tech November 2017
- Constitution Day Lecture | Rockefeller Center for Public Policy, Dartmouth College September 2017

Editorial Boards

Harvard Data Science Review

Associate Editor

since 2019

Advances in Mathematics

Member, Editorial Board

since 2018

Selected Professional and Public Service

Amicus Brief of Mathematicians, Law Professors, and Students <i>principal co-authors: Guy-Uriel Charles and Moon Duchin</i> Supreme Court of the United States, in <i>Rucho v. Common Cause</i> - cited in dissent	2019
Committee on Science Policy American Mathematical Society	2020–2023
Program Committee Symposium on Foundations of Responsible Computing	2020–2021
Presenter on Public Mapping, Statistical Modeling National Conference of State Legislatures	2019, 2020
Committee on the Human Rights of Mathematicians American Mathematical Society	2016–2019
Committee on The Future of Voting: Accessible, Reliable, Verifiable Technology National Academies of Science, Engineering, and Medicine	2017–2018

Visiting Positions and Residential Fellowships

Visiting Professor Department of Mathematics Boston College Chestnut Hill, MA	Fall 2021
Fellow Radcliffe Institute for Advanced Study Harvard University Cambridge, MA	2018–19
Member Center of Mathematical Sciences and Applications Harvard University Cambridge, MA	2018–19
Visitor Microsoft Research Lab MSR New England Cambridge, MA	2018–19
Research Member Geometric Group Theory program Mathematical Sciences Research Institute Berkeley, CA	Fall 2016
Research Member Random Walks and Asymptotic Geometry of Groups program Institut Henri Poincaré Paris, France	Spring 2014
Research Member Low-dimensional Topology, Geometry, and Dynamics program Institute for Computational and Experimental Research in Mathematics Providence, RI	Fall 2013
Research Member Geometric and Analytic Aspects of Group Theory program Institut Mittag-Leffler Stockholm, Sweden	May 2012
Research Member Quantitative Geometry program Mathematical Sciences Research Institute Berkeley, CA	Fall 2011
Postdoctoral Fellow Teichmüller "project blanc" Agence Nationale de la Recherche (Collège de France) Paris, France	Spring 2009

EXHIBIT B

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426
21 CVS 500085

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

REBECCA HARPER, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

**LEGISLATIVE DEFENDANTS'
NOTICE OF DEPOSITION OF
SAM HIRSCH**

PLEASE TAKE NOTICE that on December 31, 2021, beginning at 9:00 a.m., Legislative Defendants in the above-captioned matter will take the deposition of Sam Hirsch via an online videoconference, pursuant to Rules 26 and 30 of the North Carolina Rules of Civil Procedure. The testimony will be recorded by video recording and stenographic means and will be taken remotely before a Notary Public or some other person duly authorized by law to take depositions. The deponent, court reporter, and counsel will each remotely join the videoconference via phone and/or

an email invitation that will be sent by the court reporter. The examination shall continue from day to day until completed. All counsel are invited to attend and cross-examine as provided by law.

This the 27th day of December, 2021.

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com
Thomas A. Farr (NC Bar No. 10871)
tom.farr@nelsonmullins.com
Alyssa M. Riggins (NC Bar No. 52366)
alyssa.riggins@nelsonmullins.com
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 329-3800

BAKER HOSTETLER LLP
Mark E. Braden* (DC Bar No. 419915)
MBraden@bakerlaw.com
Katherine McKnight* (VA Bar No. 81482)
kmcknight@bakerlaw.com
1050 Connecticut Ave NW, Suite 1100 Washington
DC 20036

* Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

It is hereby certified that on this the 27th day of December, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com
*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
*Counsel for Plaintiffs Rebecca Harper, et
al.*

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
*Counsel for the North Carolina State Board
of Elections; Damon Circosta, Stella
Anderson, Jeff Carmon III, Stacy Eggers IV,
and Tommy Tucker, in their official
capacities with the State Board of Elections*

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org

J. Tom Boer
Olivia T. Molodanof
Hogan Lovells US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com
Counsel for Intervenor Common Cause

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com

EXHIBIT C

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426
21 CVS 500085

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

REBECCA HARPER, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

LEGISLATIVE DEFENDANTS' TRIAL WITNESS LIST

Pursuant to the Court's December 13, 2021 Scheduling Order, Legislative Defendants identify the following witnesses who they may call to testify live at the trial in this matter:

1. Senator Ralph Hise
2. Representative Destin Hall
3. Dr. Michael Barber
4. Dr. Andrew Taylor

5. Dr. Jeffrey Lewis
6. Mr. Sam Hirsch
7. Mr. Sean Trende
8. All witnesses listed by *Harper* Plaintiffs or *NCLCV* Plaintiffs
9. All witnesses listed by Plaintiff-Intervenors.

Legislative Defendants reserve the right, to the fullest extent permitted under the North Carolina Rules of Civil Procedure, the Local Rules for the Civil Superior Court for the Tenth Judicial District, the General Rules of Practice for the Superior and District Courts, and the orders of this Court to supplement this list.

This the 27th day of December, 2021.

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com
Thomas A. Farr (NC Bar No. 10871)
tom.farr@nelsonmullins.com
Alyssa M. Riggins (NC Bar No. 52366)
alyssa.riggins@nelsonmullins.com
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 329-3800

BAKER HOSTETLER LLP
Mark E. Braden* (DC Bar No. 419915)
MBraden@bakerlaw.com
Katherine McKnight* (VA Bar No. 81482)
kmcknight@bakerlaw.com
1050 Connecticut Ave NW, Suite 1100 Washington DC
20036
* Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

It is hereby certified that on this the 27th day of December, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com
*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
*Counsel for Plaintiffs Rebecca Harper, et
al.*

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
*Counsel for the North Carolina State Board
of Elections; Damon Circosta, Stella
Anderson, Jeff Carmon III, Stacy Eggers IV,
and Tommy Tucker, in their official
capacities with the State Board of Elections*

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org

J. Tom Boer
Olivia T. Molodanof
Hogan Lovells US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com
Counsel for Intervenor Common Cause

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com

EXHIBIT D

Scholtus, Thomas R.

From: Schauf, Zachary C.
Sent: Tuesday, December 28, 2021 8:10 AM
To: Alyssa Riggins; McKnight, Katherine L.; Jones, Stanton; Theodore, Elisabeth; Steed, Terence; Callahan, Sam; akhanna@elias.law; Imadduri@elias.law; jshelly@elias.law; gwhite@elias.law; Hilary Harris Klein; allison@southerncoalition.org; Mitchell D. Brown; Katelin Kaiser; Jeff Loperfido; Adam Doerr; Narendra Ghosh; Brennan, Stephanie; Burton Craige; Erik R. Zimmerman; Majmundar, Amar; Paul Smith; Phil Strach; Stephen Feldman; Tom Farr; Babb, Mary Carla (Hollis); Braden, E. Mark; Raile, Richard; Lewis, Patrick T.; John Branch; Hirsch, Sam; Amunson, Jessica Ring; Bracey, Kali N.; Mittal, Urja R.; Molodanof, Olivia; Boer, Tom; Martin Warf; Greg McGuire; Nate Pencook; Cella, John
Subject: RE: NCLCV v. Hall; Notice of Deposition

Counsel,

We have reviewed the Legislative Defendants' Notice of Deposition of Sam Hirsch, which is improper for at least two reasons. First, it is procedurally deficient. Mr. Hirsch is not a party, but is instead a third party; hence, in no event may the Legislative Defendants proceed by notice of deposition. *E.g., Blue Ridge Pediatric & Adolescent Medicine, Inc. v. First Colony Healthcare, LLC*, No. 11 CVS 127, 2012 WL 3249553, at *7 (N.C. Super. Ct. Aug. 9, 2012); *Kelley v. Agnoli*, 695 S.E.2d 137, 147 (N.C. Ct. App. 2010).

Second, in all events, taking Mr. Hirsch's deposition is neither necessary nor appropriate. Depositions of a party's litigation counsel are granted only in extraordinary circumstances, which this is not. Your notice, at bottom, seeks to depose Mr. Hirsch because he worked with non-testifying experts to craft the NCLCV Plaintiffs' proposed remedy for the constitutional violation they have alleged in their Verified Complaint. It would never be appropriate to depose litigation counsel on that ground, and your request is particularly inappropriate here, given how clearly it aims to harass one of the NCLCV Plaintiffs' lead counsel on the eve of trial.

If there is information that the Legislative Defendants legitimately believe they need, in addition to the voluminous and comprehensive information that the NCLCV Plaintiffs have produced five days ago in compliance with the Court's December 20 Order, the Legislative Defendants should propound appropriate interrogatories seeking additional factual information in lieu of seeking testimony from trial counsel.

Please let us know by 5:00 p.m. today whether you will withdraw your deposition notice. Please also confirm that you will strike Mr. Hirsch from your witness list for trial, which is highly inappropriate and threatens to deprive the NCLCV Plaintiffs of their choice of trial counsel. Otherwise, we will seek appropriate relief from the Court. The NCLCV Plaintiffs reserve all rights.

Regards,

Zach

From: Alyssa Riggins <alyssa.riggins@nelsonmullins.com>
Sent: Monday, December 27, 2021 9:24 AM
To: McKnight, Katherine L. <kmcknight@bakerlaw.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Steed, Terence <Tsteed@ncdoj.gov>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; akhanna@elias.law; Imadduri@elias.law; jshelly@elias.law; gwhite@elias.law; Hilary Harris Klein <hilaryhklein@scsj.org>; allison@southerncoalition.org; Mitchell D. Brown <mitchellbrown@scsj.org>; Katelin Kaiser <katelin@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Adam

Doerr <ADOerr@robinsonbradshaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Burton Craig <bcraige@pathlaw.com>; Erik R. Zimmerman <ezimmerman@robinsonbradshaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Paul Smith <psmith@pathlaw.com>; Phil Strach <phil.strach@nelsonmullins.com>; Stephen Feldman <SFeldman@robinsonbradshaw.com>; Tom Farr <tom.farr@nelsonmullins.com>; Babb, Mary Carla (Hollis) <MCBabb@ncdoj.gov>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Lewis, Patrick T. <plewis@bakerlaw.com>; John Branch <john.branch@nelsonmullins.com>; Hirsch, Sam <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Bracey, Kali N. <KBracey@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>; Molodanof, Olivia <olivia.molodanof@hoganlovells.com>; Boer, Tom <tom.boer@hoganlovells.com>; Martin Warf <martin.warf@nelsonmullins.com>; Greg McGuire <greg.mcguire@nelsonmullins.com>; Nate Pencook <nate.pencook@nelsonmullins.com>; Cella, John <John.Cella@arnoldporter.com>

Subject: NCLCV v. Hall; Notice of Deposition

External Email – Exercise Caution
Counsel,

Please find the attached notice of deposition.

Best,
Alyssa



ALYSSA RIGGINS ASSOCIATE
alyssa.riggins@nelsonmullins.com
GLENLAKE ONE | SUITE 200
4140 PARKLAKE AVENUE | RALEIGH, NC 27612
T 919.329.3810 F 919.329.3799
NELSONMULLINS.COM VCARD VIEW BIO

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

Zachary C. Schauf

Jenner & Block LLP
1099 New York Avenue, N.W.
Suite 900, Washington, DC 20001-4412 | jenner.com
+1 202 637 6379 | TEL
+1 202 424 9309 | MOBILE
ZSchauf@jenner.com
[Download V-Card](#) | [View Biography](#)

CONFIDENTIALITY WARNING: This email may contain privileged or confidential information and is for the sole use of the intended recipient(s). Any unauthorized

use or disclosure of this communication is prohibited. If you believe that you have received this email in error, please notify the sender immediately and delete it from your system.

EXHIBIT E

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426
21 CVS 500085

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

REBECCA HARPER, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

**LEGISLATIVE DEFENDANTS' OBJECTIONS AND RESPONSES TO PLAINTIFFS'
SECOND SET OF INTERROGATORIES**

Defendants Representative Destin Hall, Senator Ralph E. Hise, Jr., Speaker of the North Carolina House Timothy R. Moore, and President Pro Tem of the North Carolina Senate, Philip E. Berger, Senator Warren Daniel, and Senator Paul Newton ("Defendants"), by and through undersigned counsel, serve their objections and responses to Plaintiffs' Second Set of Interrogatories as follows:

GENERAL OBJECTIONS

Defendants make the following answers, responses, and objections to Plaintiffs' Second Set of Interrogatories ("Interrogatories"). Each of the following responses is made subject to any and all objections as to competence, relevance, or other grounds that would require exclusion of such statement if made by a witness present and testifying in court. Any and all such objections and grounds are expressly reserved and may be interposed at the time of trial.

The responses are based on Defendants' present knowledge, information, and belief, as derived from (a) the knowledge and information of present employees or agents of Defendants gained in their capacity as such and (b) a review of the documents and materials maintained by Defendants that would be likely to contain the information called for by the Interrogatories. These responses are subject to amendment and supplementation as Defendants acquire additional information and complete their review and analysis and made without prejudice to Defendants' right to use subsequently discovered or developed information. Defendants state that their responses to the Interrogatories were prepared in consultation with their attorneys and may not exactly match the words or phrases that may be used by individuals in the course of this litigation to describe events, policies, and practices discussed herein.

No incidental or implied admissions are intended by these responses. The fact that Defendants respond or object to any Interrogatory should not be taken as an admission that Defendants accept or admit the existence of any facts assumed by such Interrogatory or that such Response or objection constitutes admissible evidence as to any such assumed facts. The fact that Defendants respond to part of or all of any Interrogatory is not intended to be, and shall not be, construed as, a waiver by Defendants of any part of any objection to any Interrogatory.

Defendants will respond to Plaintiffs' Document requests in accordance with Rules 26 and 33 of the North Carolina Rules of Civil Procedure and will not provide responses or documents to the extent such responses or production would exceed the requirements of those Rules. Defendants only respond to these discovery requests with information or documents in their possession, custody or control.

Since the North Carolina Rules of Civil Procedure prohibit discovery of privileged matters, Defendants have attempted to interpret each Document Request to call for discoverable matter only. To the extent any response or produced document contains or refers to matters otherwise protected from discovery by the work product doctrine, the attorney-client privilege, or the legislative privilege, no waiver is intended; nor is any waiver intended as to any other matters that are or may be subject to such protection or otherwise privileged.

These responses are provided solely for the purpose of and in relation to this action

Responses and Objections to Specific Interrogatories

1. Identify by 5 p.m. on December 23, 2021, each person who, to your knowledge took part in the drawing of the 2021 Plans, including each person who had any involvement in (a) the development, formulation, discussion, consideration, review, drawing, revision, negotiation, and/or adoption of the 2021 Plans and/or the 2021 Plans Criteria; (b) assisting Legislative Defendants, directly or indirectly, in conducting any of the activities described in subsection (a); or (c) providing input, directly or indirectly to any Legislative Defendant, to their staff, or to employees of the General Assembly on the 2021 Plans and/or the 2021 Plans Criteria. This request covers individuals including, but not limited to, legislative staff members and contractors, legal counsel, members of political organizations, and outside consultants of any kind, including outside political consultants or outside mapmakers:

RESPONSE: Defendants object to this interrogatory to the extent it calls for the production of information protected by the attorney-client privilege, legislative privilege, or the work-product doctrine.¹ Defendants further object on the grounds that this request seeks information beyond Defendants’ knowledge. Legislators could have spoken to staff members, other legislators, or members of the public without the knowledge of Defendants. Subject to and without waiving these objections, Legislative Defendants identify:

Rep. Destin Hall	Rep. William Richardson	Rep. Jason Saine
Rep. John Torbett	Rep. Jay Adams	Rep. Cecil Brockmam
Rep. Becky Carney	Rep. Linda Cooper-Suggs	Rep. Jimmy Dixon
Rep. Jon Hardister	Rep. Pricey Harrison	Rep. Kelly Hastings
Rep. Zack Hawkins	Rep. Brenden Jones	Rep. Grey Mills
Rep. Robert Reives	Rep. David Rogers	Rep. John Szoka
Rep. Harry Warren	Rep. Lee Zachary	Sen. Ralph Hise
Sen. Warren Daniel	Sen. Paul Newton	Sen. Dan Blue
Sen. Jay Chaudhuri	Sen. Ben Clark	Sen. Don Davis
Sen. Chuck Edwards	Sen. Carl Ford	Sen. Kathy Harrington
Sen. Brent Jackson	Sen. Joyce Krawiec	Sen. Paul Lowe
Sen. Natasha Marcus	Sen. Natalie Murdock	Sen. Wiley Nickel
Sen. Jim Perry	Sen. Bill Rabon	Sen. Gladys Robinson

¹ Defendants have not withheld any information in response to this Interrogatory on the basis of these objections.

Legislative Defendants further identify all members of the General Assembly who voted on the Redistricting bills. The roll calls are publicly available on the General Assembly Website.

Legislative Defendants further identify the following staff members and third parties:

- **All individuals who spoke at public hearings**
- **Neal Inman**
- **Brian Fork**
- **Joshua Yost**
- **Sam Hayes**
- **Brent Woodcox**
- **Dylan Reel**
- **Nathan Babcock**
- **Jonathan Mattingly**
- **Attorneys at Nelson Mullins and Baker Hostetler provided legal advice in connection with the 2021 redistricting.**
- **Non-Partisan Central Staff Members**

2. Identify, by 5 p.m. pm December 23, 2021, all documents or data relied upon or otherwise considered by any Legislative Defendant or by any person identified in response to Interrogatory No. 1 above in connection with the creation of the 2021 Plans, including but not limited to draft redistricting plans (whether partial or complete), analysis of or relating to the 2021 Plans or drafts thereof, election or other partisan data, racial data, or any other data.

RESPONSE: Defendants object to this interrogatory to the extent it calls for the production of information protected by the attorney-client privilege, legislative privilege, or the work-product doctrine.² Defendants further object that this request is duplicative of Request for Production of Document No. 1. Subject to and without waiving these objections, Defendants state that no partisan or racial data was used or relied upon by Defendants. Defendants cannot speak for Dr. Mattingly, or the other third parties identified above. Defendants further state that they relied upon Dr. Mattingly's county groupings, which are publicly available, the 2020 census data (excluding any racial or political data), and incumbent addresses (which have already been produced to Counsel). Defendants also consulted publicly available remedial maps, and court opinions, including the special master reports of Nathan Persily drafted in *Covington v. North Carolina*. As a further response, Defendants refer Plaintiffs to Defendants' Objections and Responses to Request for Production of Document No. 1.

Defendant Hall states that during the truncated map-drawing period he relied on a staff member, Mr. Dylan Reel, to help prepare draft concept maps to develop options for a limited number of districts in a limited number of county groupings while complying with redistricting criteria. Defendant Hall would sometimes review these concept maps while drawing plans but the concept maps did not dictate map drawing and often Defendant Hall ignored them altogether. Defendant Hall and Mr. Reel did not use any racial or political data in preparing these concept maps. Neither Defendant Hall nor the

² Given the broad sweep of this Interrogatory it could conceivably cover documents created or prepared by attorneys containing legal analysis or documents otherwise covered by legislative privilege. However, Defendants have not to their knowledge withheld any documents or data based on these objections.

other Legislative Defendants have copies of these concept maps or any information or data related to such maps.

Submitted, this the 28th day of December, 2021.

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com
Thomas A. Farr (NC Bar No. 10871)
tom.farr@nelsonmullins.com
Alyssa M. Riggins (NC Bar No. 52366)
alyssa.riggins@nelsonmullins.com
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 329-3800

BAKER HOSTETLER LLP
Mark E. Braden* (DC Bar No. 419915)
MBraden@bakerlaw.com
Katherine McKnight* (VA Bar No. 81482)
kmcknight@bakerlaw.com
1050 Connecticut Ave NW, Suite 1100 Washington
DC 20036
* Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

It is hereby certified that on this the 28th day of December, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
*Counsel for Plaintiffs Rebecca Harper, et
al.*

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
*Counsel for the North Carolina State Board
of Elections; Damon Circosta, Stella
Anderson, Jeff Carmon III, Stacy Eggers IV,
and Tommy Tucker, in their official
capacities with the State Board of Elections*

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
Katelin@scsj.org

J. Tom Boer
Olivia T. Molodanof
Hogan Lovells US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com
Counsel for Intervenor Common Cause

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

REBECCA HARPER, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

Consolidated with
21 CVS 500085

**RESPONSE IN OPPOSITION TO NCLCV PLAINTIFFS’ MOTION FOR PROTECTIVE
ORDER QUASHING NOTICE OF DEPOSITION DIRECTED TO NCLCV COUNSEL
OF RECORD SAM HIRSCH AND DIRECTING LEGISLATIVE DEFENDANTS TO
STRIKE SAM HIRSCH FROM THEIR WITNESS LIST FOR TRIAL**

NOW COME President *Pro Tempore* Philip E. Berger, Senator Warren Daniel, Senator Ralph E. Hise, Senator Paul Newton, Speaker Timothy K. Moore, and Representative Destin Hall (collectively, “Legislative Defendants”), by and through undersigned counsel, and pursuant to the Orders entered by this Court on November 30, 2021 and December 20, 2021 and Rules 7(b) and 26(c) of the North Carolina Rules of Civil Procedure, and oppose “NCLCV Plaintiffs’ Motion for Protective Order Quashing Notice of Deposition Directed to NCLCV Counsel of Record Sam Hirsch and Directing Legislative Defendants to Strike Sam Hirsch from Their Witness List for Trial” (the “Motion for Protective Order”). Legislative Defendants respectfully show the Court as follows:

ARGUMENT

NCLCV Plaintiffs filed a verified complaint with this Court alleging that the North Carolina General Assembly’s 2021 state legislative and congressional redistricting plans were unconstitutional on theories of partisan gerrymandering and race dilution. Their claims are premised on a comparison of the Enacted Plans to NCLCV’s so-called “Optimized Maps” that were generated by “harnessing the power of mathematics and computer science to identify” these alleged flaws. Verified Compl. at ¶ 1. Indeed, the NCLCV maps formed a basis of their Motion for a Preliminary Injunction, form the basis of the Report from their sole named expert, and even constitute the remedy that NCLCV Plaintiffs suggest this Court should adopt if certain preconditions are not met.

Yet remarkably, NCLCV Plaintiffs have worked tirelessly to shield these “Optimized Maps”—the very maps they would be happy for this Court to impose on North Carolina’s voters for the next decade—from any and all scrutiny from Legislative Defendants. This Court has already halted these obstructive efforts, issuing an Order (over their objection) compelling NCLCV Plaintiffs to produce information regarding the creation of these maps. And now that they have been forced to disclose that Mr. Hirsch, one of the lead counsel of record for NCLCV Plaintiffs, was the sole person who “directed” the creation of the “Optimized Maps,” they now ask this Court to bar Legislative Defendants from deposing the author of the “Optimized Maps” and thereby deprive them of indisputably relevant information, possessed exclusively by Mr. Hirsch, that is central to NCLCV Plaintiffs’ claims and proposed remedies. The Court should decline to shield the admitted author of NCLCV’s plans from discovery.

Legislative Defendants’ position and legal contentions that support its opposition to NCLCV Plaintiffs’ Motion for Protective Order are generally set forth in its Motion for

Clarification, or in the Alternative, Motion to Compel, filed provisionally under seal, earlier today. That Motion makes clear that Legislative Defendants’ efforts to seek testimony from Mr. Hirsch clearly meet all requirements of the *Shelton* Rule, to the extent the Court finds that rule is applicable here. In the interests of judicial efficiency and the Court’s convenience, Legislative Defendants hereby incorporate the arguments and contentions made in their Motion for Clarification by reference into this response. Legislative Defendants’ also make the following additional observations in opposition to NCLCV’s Motion:

First, NCLCV is an interest group comprised of professionals well-acquainted with litigation, and Mr. Hirsch is learned counsel with decades of experience in complex, civil litigation, and presumably well-versed in redistricting litigation. It would strain credulity to believe that the NCLCV Plaintiffs were unaware that the author of their Congressional and state legislative district maps – which they sought to impose on the voters of North Carolina – was likely to be deposed on how and why she or he drew the maps. Indeed, discovery into the rationale for how and why district lines are composed is one of the most common components of redistricting litigation. There is significant legal support for the principle that the involvement of attorneys in map drawing, even attorneys serving as counsel of record in subsequent litigation concerning redistricting processes, renders those attorneys to be fact witnesses, their documents potentially subject to discovery, and themselves subject to giving testimony. *See, e.g., Baldus v. Brennan*, No. 11-CV-1011 JPS-DPW, 2011 WL 6122542, at *1 (E.D. Wis. Dec. 8, 2011), *order clarified*, No. 11-CV-1011 JPS-DPW, 2011 WL 6385645 (E.D. Wis. Dec. 20, 2011) (attorney’s communications with legislative map drawers were not protected by the attorney-client privilege where the attorney was acting as a “consultant” rather than a representative); *Ohio A. Philip Randolph Institute v. Smith*, No. 1:18-cv-00357, ECF No. 121 (W.D. Ohio, Dec. 15, 2018)

(granting plaintiffs’ motion to compel compliance with subpoenas served on an attorney after finding his communications with individuals whom he was both representing and helping draw redistricting maps were not protected by the attorney-client privilege). Accordingly, Mr. Hirsch’s decision to involve himself in, nay “direct,” the drawing of NCLCV Plaintiffs’ “Optimized Maps” was made necessarily in full view of the risk that he may be called upon as a fact witness in subsequent litigation. Thus, NCLCV Plaintiffs cannot now invoke the structure of their litigation strategy and witness presentation or ramifications of the North Carolina Rules of Professional Conduct, which Mr. Hirsch voluntarily agreed to subject himself to in moving to appear pro hac vice, as a basis to exclude the key witness on their proposed maps.

Second, NCLCV’s argument regarding the procedural mechanisms for obtaining Mr. Hirsch’s testimony by depositions are a red herring. Given the extraordinarily expedited and frenetic pace of discovery, NCLCV Plaintiffs know that a requirement to obtain, domesticate, and serve a third-party subpoena on an out-of-state witness, during a holiday week, and in a jurisdiction experiencing a colossal spike in Covid infections, would be near impossible. Indeed, the Court has altered other basic procedural requirements, such as standard response periods for written discovery that were not otherwise amended by its Scheduling Order or shortened by leave of the Court, given the circumstances facing the parties in this case. As such, the Court should not be swayed by NCLCV Plaintiffs’ argument on this point.

Third, ever since this Court compelled NCLCV Plaintiffs to disclose Mr. Hirsch’s involvement in the creation of the “Optimized Maps,” they have sought to back-peddle and downplay the role that they say the maps will play in the litigation. Their December 23 letter states that they will use these maps merely as “demonstrative” exhibits, and their pending Motion states that they “will not offer at trial any evidence or argument” about how they were created. Their

Motion even goes so far as to claim that “This case—and the two others that will be tried together with it—is about the maps enacted by the General Assembly” as if to suggest that no scrutiny of the maps they and their expert use to attack the Enacted Plans is appropriate. Their Verified Complaint, and the relief it seeks, however, remains unamended. Moreover, use of these maps as “demonstrative exhibits,” against which to compare the Enacted Plans, requires the conclusion that the demonstratives are a valid basis for comparison—that the proverbial apples being compared to apples. And that conclusion necessarily requires an understanding of how the maps being compared were created in the first place. Who could be more necessary to give insight on that question than the sole person identified as the one who “directed” the process that created the maps?

Fourth, NCLCV Plaintiffs have conceded that Mr. Hirsch is a fact witness and that he is able to convey responsive, discoverable, factual information consistent with his obligations under the attorney client privilege and work product doctrine. On pages 8 and 9 of their Motion, NCLCV Plaintiffs acknowledge their ability to “disaggregate” facts from privileged information in interrogatory responses. If they can do so through interrogatory responses, they can do so in deposition testimony. Moreover, a deposition is likely to be far more economical in terms of attorney time than the process of drafting and responding to written discovery at this phase.

Finally, all of these reasons support inclusion of Mr. Hirsch on Legislative Defendants’ proposed witness list.

CONCLUSION

WHEREFORE, for the reasons set forth above, Legislative Defendants respectfully request this Court deny NCLCV Plaintiffs’ Motion for Protective Order Quashing Notice of Deposition Directed to NCLCV Counsel of Record Sam Hirsch and Directing Legislative Defendants to Strike Sam Hirsch from Their Witness List for Trial.

Respectfully submitted, this the 29th day of December, 2021.

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP

Phillip J. Strach (NC Bar No. 29456)

phillip.strach@nelsonmullins.com

Thomas A. Farr (NC Bar No. 10871)

tom.farr@nelsonmullins.com

Alyssa M. Riggins (NC Bar No. 52366)

alyssa.riggins@nelsonmullins.com

4140 Parklake Avenue, Suite 200

Raleigh, NC 27612

Telephone: (919) 329-3800

BAKER HOSTETLER LLP

Mark E. Braden* (DC Bar No. 419915)

MBraden@bakerlaw.com

Katherine McKnight* (VA Bar No. 81482)

kmcknight@bakerlaw.com

1050 Connecticut Ave NW, Suite 1100 Washington

DC 20036

* Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

It is hereby certified that on this the 29th day of December, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com
Counsel for Plaintiffs North Carolina League of Conservation Voters, et al.

Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
Counsel for the North Carolina State Board of Elections; Damon Circosta, Stella Anderson, Jeff Carmon III, Stacy Eggers IV, and Tommy Tucker, in their official capacities with the State Board of Elections

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
Counsel for Plaintiffs North Carolina League of Conservation Voters, et al.

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
Katelin@scsj.org

J. Tom Boer
Olivia T. Molodanof
Hogan Lovells US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com
Counsel for Intervenor Common Cause

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com

CONTAINS CONFIDENTIAL INFORMATION-PROVISIONALLY UNDER SEAL

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

REBECCA HARPER, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

Consolidated with
21 CVS 500085

**MOTION FOR CLARIFICATION, AND IN THE ALTERNATIVE, MOTION TO
COMPEL**

NOW COME President *Pro Tempore* Philip E. Berger, Senator Warren Daniel, Senator Paul Newton, and Speaker Timothy K. Moore (collectively, “Legislative Defendants”), by and through undersigned counsel, and pursuant to the Orders entered by this Court on November 30, 2021 and December 20, 2021 and Rules 26, 30, and 37 of the North Carolina Rules of Civil Procedure, respectfully move this court for an order clarifying whether its order granting pro hac vice status to Sam Hirsch (“Hirsch”) allows Legislative Defendants to obtain deposition and trial testimony of him without a subpoena as he is now a fact witness in this matter. Alternatively, Legislative Defendants request that the Court compel Hirsch to appear and testify in this matter—both in a noticed deposition and at trial. In support of this motion, Legislative Defendants respectfully submit the following:

CONTAINS CONFIDENTIAL INFORMATION-PROVISIONALLY UNDER SEAL

INTRODUCTION

NCLCV Plaintiffs came to Court alleging that “Plaintiffs have harnessed the power of high-performance computers, and employed cutting-edge computational methods and resources, to draw” what they term their “Optimized Maps.” Verified Compl. ¶ 154. They claim they did so with the goal of “ensuring fair representation for all North Carolinians.” *Id.* at ¶ 2. And throughout this case, NCLCV Plaintiffs have offered their Optimized Maps for two express purposes: (1) as evidence the General Assembly engaged in partisan gerrymandering and racial vote-dilution in crafting the 2021 plans and (2) as benchmark plans to either serve as a remedial plan, or else as the benchmark for another remedial plan, in this case. *Id.* at ¶ 155-57, Prayer for Relief at ¶ f.

Unacceptably, however, NCLCV Plaintiffs have fought at every turn to conceal the details of the “Optimized Maps” that are central to their claims. First, they refused to timely produce all source code, source data, input parameters, and all outputted data pertaining to the expert reports produced to Legislative Defendants during the preliminary-injunction phase. Then, and only after an order from this Court, they provided the source code and like information—and then also revealed, in a December 23, 2021, cover letter they *also* marked “Confidential” (to shield it from public view), that their attorney, Sam Hirsch “directed the drawing and computerized production of” the Optimized Maps. *See Exhibit A.*¹ And although the December 23 letter describes to some extent the computer algorithm used, NCLCV Plaintiffs have also admitted to human involvement playing a role in the creation of the Optimized Maps. The Optimized Maps are central to NCLCV

¹ After the Court ordered NCLCV Plaintiffs produce information relating to their Optimized Maps, counsel now claims that they only intend to rely on these maps as demonstratives. (*See* December 23, 2021 Letter, p. 2). This new contention is at odds with the face of NCLCV Plaintiff’s Verified Complaint, which heavily relies on the Optimized Maps to allege the Enacted Plans are extreme partisan gerrymanders and racially vote-dilutive. *See* NCLCV Verified Complaint, ¶¶ 7, 9, 93, 94, 96–97, 99, 104(a), 105(b), 108–09, 113, 118–119, 121–23, 125, 137–138, 140, 144(a), 145(b), 146(c), 147, 149, 153–80, 189–90. NCLCV Plaintiffs also proposed the Optimized Maps as a remedy in this case. NCLCV Motion for Preliminary Injunction, ¶ 7(a). This position is further undermined by the report of their expert, Dr. Duchin, whose opinions derive from a comparison between the Enacted Plans and the “Optimized Maps.”

CONTAINS CONFIDENTIAL INFORMATION-PROVISIONALLY UNDER SEAL

Plaintiffs' claims, and thus Legislative Defendants have no choice but to depose Hirsch to ensure a proper defense, without prejudice.

BACKGROUND

The NCLCV Plaintiffs filed their Verified Complaint and Motion for Preliminary Injunction on November 16, 2021, challenging North Carolina's 2021 Congressional, House, and Senate Plans under the Free Elections, Equal Protection, Free Speech, and Free Assembly Clauses of the North Carolina Constitution. The Verified Complaint contends that "[t]his suit is about harnessing the power of mathematics and computer science to identify and remedy the severe constitutional flaws in the redistricting maps recently enacted by the North Carolina General Assembly." *NCLCV* Compl. ¶ 1. Accordingly, in their Motion for Preliminary Injunction, the NCLCV Plaintiffs sought as a remedy the adoption of alleged "Optimized Maps" in the event that the North Carolina General Assembly did not adopt new redistricting plans that remedied the constitutional violations alleged by the NCLCV Plaintiffs. *See* *NCLCV* Motion for Preliminary Injunction, ¶ 7(a). Contemporaneously with the Verified Complaint and Preliminary Injunction Motion, NCLCV Plaintiffs filed the Affidavit of Dr. Moon Duchin, analyzing the Enacted Plans in comparison to the Optimized Plans to support their allegations of "constitutional flaws" in the Enacted Plans. At the preliminary injunction hearing, counsel for NCLCV Plaintiffs acknowledged human intervention, in addition to computer algorithms, in crafting the Optimized Maps. The nature and extent of this human intervention, however, was not disclosed.

On December 3, 2021, this Court denied the preliminary injunction sought by the NCLCV Plaintiffs. Subsequently, on December 8, 2021, the Supreme Court of North Carolina granted a preliminary injunction to stay candidate filing periods, delay primaries, and expedite the trial of this matter, presumably in reliance in part on the analysis set forth by NCLCV Plaintiffs'

CONTAINS CONFIDENTIAL INFORMATION-PROVISIONALLY UNDER SEAL

Optimized Maps, concluding that “the great public interest in the subject matter of these cases” and their “importance . . . to the constitutional jurisprudence of this State” justified extraordinary relief. December 8, 2021 Supreme Court Order at 3.

On December 20, 2021, this Court ordered NCLCV Plaintiffs to “produce to the Legislative Defendants the method and means by which the Optimized Maps were formulated and produced, including, but not limited to all source code, source data, input parameters, and all outputted data associated with the Optimized Maps,” and to “further identify any and all persons who took part in drawing or participated in the computerized production of the Optimized Maps.”

In a letter dated December 23, 2021 served upon Legislative Defendants, counsel for NCLCV Plaintiffs outlined and minimized the process by which its “Optimized Maps” were drawn. *See Exhibit A.* NCLCV Plaintiffs, however, designated the entirety of this letter and the documents produced with it as “Confidential” under a Protective Order issued by this Court on December 15, 2021. The letter makes clear that one person oversaw, directed, and instructed the creation of NCLCV Plaintiffs’ Optimized Maps: Sam Hirsch. *Id.* at p 3. NCLCV Plaintiffs concurrently served a new expert report from Dr. Duchin which was grounded in a comparison between the enacted plans and the “Optimized Maps” to formulate her opinions that the plans were partisan gerrymanders and were dilutive of the votes of the State’s Black voters. Duchin Rep. at 3. Dr. Duchin will be the sole witness to testify “live” at trial on NCLCV Plaintiffs’ behalf.

Given this explicit identification of Hirsch as the creator of the so-called Optimized Maps, Legislative Defendants immediately recognized the need to take Hirsch’s deposition and include him as a potential trial witness. Legislative Defendants served a Notice of Deposition on Hirsch on December 27, 2021 for a virtual deposition before the close of the discovery period in this case on December 31, 2021.

CONTAINS CONFIDENTIAL INFORMATION-PROVISIONALLY UNDER SEAL

NCLCV Plaintiffs responded on December 28, 2021, in pertinent part, by claiming first that a notice of deposition was deficient procedurally because Mr. Hirsch is not a party to the case. NCLCV Plaintiffs also claimed that “taking Mr. Hirsch’s deposition is neither necessary nor appropriate. Depositions of a party’s litigation counsel are granted only in extraordinary circumstances, which this is not.” These claims are without merit.

ARGUMENT

I. Hirsch is subject to the civil jurisdiction of this court and thus this Court should clarify that a notice of deposition is sufficient means to seek testimony from Mr. Hirsch.

On November 30, 2021, this Court granted Hirsch’s motion to appear via pro hac vice admission in this matter. The Court conditioned its Order on Hirsch being “subject to and amenable to the disciplinary action and civil jurisdiction of the General Court of Justice and of the North Carolina State Bar.” Given the scheduling deadlines and highly expedited nature of this case, Legislative Defendants now seek clarification as to whether a notice of deposition is sufficient means to proceed upon the deposition of Hirsch, who has already submitted to this Court’s civil jurisdiction. Under these extraordinary circumstances, requiring an out of state, third-party subpoena to depose Hirsch is unreasonable and will prejudice Legislative Defendants’ ability to timely complete discovery into matters central to their defense. Therefore, Legislative Defendants respectfully request the Court confirm that the Notice of Deposition they issued to Hirsch is sufficient to require his appearance for a deposition.

II. The deposition of Hirsch is necessary and appropriate as he, and only he, has factual information essential to the proper adjudication of this matter.

NCLCV Plaintiffs do not dispute that Sam Hirsch has relevant information reasonably calculated to lead to the discovery of admissible evidence. Instead, NCLCV Plaintiffs claim that oral testimony from Hirsch is somehow not necessary. However, the deposition of Hirsch is

CONTAINS CONFIDENTIAL INFORMATION-PROVISIONALLY UNDER SEAL

relevant, necessary, and crucial to Legislative Defendants' defense. Even though Hirsch is litigation counsel for NCLCV Plaintiffs, he is also, based on their own disclosure, the person who directed the creation of the Optimized Maps.

North Carolina courts have ruled that litigation counsel may be deposed "where the party seeking to take the deposition has shown that (1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged [sic]; and (3) the information is crucial to the preparation of the case." *Blue Ridge Pediatric & Adolescent Medicine, Inc. v. First Colony Healthcare, LLC*, No. 11 CVS 127, 2012 WL 3249553, at *7 (N.C. Super. Ct. Aug. 9, 2012) (quoting *Shelton v. American Motors Corp.*, 805 F.2d (8th Cir. 1986)); *accord Edison v. Acuity Healthcare Holdings, Inc.*, No. 15 CVS 2745, 2016 WL 6518800, at *3 (N.C. Super. Ct. Nov. 2, 2016) (allowing the deposition of in-house counsel to factual matters outside of her employer's litigation strategy). For example, counsel may be deposed when necessary to discover facts underlying certain allegations. See *Green v. Moog Music, Inc.*, No. 121CV00069MOCWCM, 2021 WL 4130530, at *2 (W.D.N.C. Sept. 10, 2021) (disqualifying Plaintiff's counsel in part and noting Plaintiff's counsel would likely need to be deposed as to an underlying event relied upon in the complaint that the attorney was present for). "A witness's testimony is 'necessary' within the meaning of the rule when it is relevant, material, and unobtainable by other means." *USA v. Wells*, No. 3:19-CR-00180-RJC-DSC, 2019 WL 6040785, at *2 (W.D.N.C. Nov. 14, 2019) (citing *State v. Smith*, 749 S.E.2d 507, 510 (N.C. Ct. App. 2013) (internal quotation marks and citation omitted)); North Carolina State Bar, 2011 Formal Ethics Opinion 1 ("It is generally agreed that when the anticipated testimony is relevant, material, and unobtainable by other means, the lawyer's testimony is 'necessary'").

CONTAINS CONFIDENTIAL INFORMATION-PROVISIONALLY UNDER SEAL

The plain face of the record in this matter shows that Hirsch’s involvement in the creation of the Optimized Maps is “relevant, material, and unobtainable by other means.” Hirsch’s active leadership and personal involvement in the creation of the Optimized Maps is central to NCLCV Plaintiffs’ claims. This is evident not only in the NCLCV Plaintiffs’ pleadings, which constantly reference the Optimized Maps, but also in the prior orders of this Court, to wit: On December 20, 2021, this Court ordered NCLCV Plaintiffs to “produce to the Legislative Defendants the method and means by which the Optimized Maps were formulated and produced, including, but not limited to all source code, source data, input parameters, and all outputted data associated with the Optimized Maps,” and to “further identify any and all persons who took part in drawing or participated in the computerized production of the Optimized Maps.” This Court has already recognized this information as relevant and material. Moreover, Hirsch has access to information entirely unobtainable by any other means: only Hirsch knows his thought process about his mapdrawing actions regarding the composition and creation of the “Optimized Maps” that are directly relevant and integral to NCLCV Plaintiffs’ Verified Complaint. *See* NCLCV Verified Complaint, ¶¶ 7, 9, 93, 94, 96–97, 99, 104(a), 105(b), 108–09, 113, 118–119, 121–23, 125, 137–138, 140, 144(a), 145(b), 146(c), 147, 149, 153–80, 189–90. Hirsch is not only subject to being deposed in this matter, but potentially subject to disqualification as counsel for NCLCV Plaintiffs. *See* N.C. Rules of Professional Conduct, Rule 3.7. As counsel for plaintiffs, Hirsch cannot be both responsible for creating evidentiary “proof” for Plaintiffs’ claims and also seek to shield that work from disclosure due to his role as counsel; lawyers create arguments, not evidence.

III. The information sought from Hirsch is nonprivileged as it involves his role as mastermind and director of the creation of the Optimized Maps.

In North Carolina, the attorney-client privilege protects certain communications between an attorney and a client when five elements are all present: “(1) the relation of attorney and client

CONTAINS CONFIDENTIAL INFORMATION-PROVISIONALLY UNDER SEAL

existed at the time the communication was made, (2) the communication was made in confidence, (3) the communication relates to a matter about which the attorney is being professionally consulted, (4) the communication was made in the course of giving or seeking legal advice for a proper purpose, although litigation need not be contemplated and (5) the client has not waived the privilege.” *In re Miller*, 357 N.C. 316, 335, 584 S.E.2d 772, 786 (2013) (quoting *State v. McIntosh*, 336 N.C. 517, 523, 444 S.E.2d 438, 442 (1994)). To properly avoid disclosing the information sought by Legislative Defendants – and ordered to be produced by this Court – via a claim of attorney-client privilege, NCLCV Plaintiffs are required to show that all five of these elements were present at the time that Hirsch directed the creation of the Optimized Maps. *See id.* NCLCV Plaintiffs have not and cannot meet this burden because (1) the Optimized Maps were not made in the course of Hirsch’s giving legal advice, and (2) the NCLCV Plaintiffs have waived any privilege applicable to the Optimized Maps by extensively referencing them in public pleadings. *See id.*

A. The Optimized Maps were not created in the course of an attorney-client relationship.

Communications with an attorney acting outside the scope of his representation are not protected by the attorney-client privilege. *Baldus v. Brennan*, No. 11-CV-1011 JPS-DPW, 2011 WL 6122542, at *1 (E.D. Wis. Dec. 8, 2011), *order clarified*, No. 11-CV-1011 JPS-DPW, 2011 WL 6385645 (E.D. Wis. Dec. 20, 2011). In *Baldus v. Brennan*, an attorney had assisted in drawing redistricting maps. *Id.* When litigation eventually commenced regarding the maps, an opposing party served the attorney with discovery requests seeking documents and evidence relative to his assistance in drafting the maps. *Id.* The attorney responded in a motion to quash by, in part, claiming that the subpoenaed information was protected by the attorney-client privilege. *Id.* The Court disagreed, noting that it was “apparent that attorney-client privilege ha[d] no application to the communications between the Legislature and [the attorney]. To be sure, the attorney-client

CONTAINS CONFIDENTIAL INFORMATION-PROVISIONALLY UNDER SEAL

privilege protects communications made from a client to an attorney who is acting as an attorney but does not cover communications seeking only consulting services.” *Id.* The Court reasoned that, since the attorney was not acting as a representative of the parties but was instead acting as a “consultant,” his communications were not covered by the attorney-client privilege. *Id.* Other jurisdictions have similarly found, in redistricting cases, attorneys who direct the drawing of maps do so in a political consulting, not a legal representative, fashion. *See, e.g., Ohio A. Philip Randolph Institute v. Smith*, No. 1:18-cv-00357, ECF No. 121 (W.D. Ohio, Dec. 15, 2018) (granting plaintiffs’ motion to compel compliance with subpoenas served on an attorney after finding his communications with individuals whom he was both representing and helping draw redistricting maps were not protected by the attorney-client privilege).

In the case *sub judice*, Hirsch was acting as a consultant and thus became a fact witness when directing the creation of the Optimized Maps; he was clearly not acting as an attorney giving the NCLCV Plaintiffs legal advice. This dichotomy is important. Legislative Defendants are not seeking information regarding Hirsch’s advice to his clients regarding case strategy. Nor are Legislative Defendants seeking insight into NCLCV Plaintiffs’ litigation tactics. Rather, Legislative Defendants are seeking information relative to Hirsch’s creation of evidentiary “proof” in this matter, namely the “Optimized Maps.” The timing of Hirsch’s involvement further supports these distinctions. The General Assembly passed the Enacted Plans on November 4, 2021. A mere twelve (12) days later, on November 16, 2021, NCLCV Plaintiffs filed their Verified Complaint and Motion for Preliminary Injunction, referencing and relying on the Optimized Maps, and Dr. Duchin’s analysis of the same, for emergency relief. Though NCLCV Plaintiffs do not indicate in their December 23 letter the date(s) on which Hirsch directed the creation and production of the Optimized Maps, it is almost impossible to complete such detailed analysis

CONTAINS CONFIDENTIAL INFORMATION-PROVISIONALLY UNDER SEAL

within that time—let alone create the Optimized Maps and have a separate expert, Dr. Duchin, independently run her own analysis on the maps. Therefore, upon information and belief, Hirsch directed creation of the maps before November 4 in an effort to discredit whatever maps the General Assembly ultimately passed. Accordingly, Hirsch cannot escape serving as a fact witness and deponent in this matter under the guise of the attorney-client privilege.

B. Even if the attorney-client privilege applies NCLCV Plaintiffs have waived the privilege.

North Carolina Courts use a “fairness balancing approach in which subject matter waiver is applied for remedial, rather than punitive, purposes.” *Window World of Baton Rouge, LLC*, 2019 NCBC Lexis 54, at *37 (quoting *Technetics Grp. Daytona, Inc. v. N2 Biomedical, LLC*, 2018 NCBC Lexis 116, at *15-16 (N.C. Super. Ct. Nov. 8, 2018)). Under the fairness balancing approach “when a party reveals part of a privileged communication to gain an advantage in litigation, the party waives the attorney-client privilege as to all other communications related to the same subject matter.” *United States v. Jones*, 696 F.2d 1069, 1072 (4th Cir. 1982).

Here, assuming Hirsch’s participation and leadership in the drafting of the Optimized Maps is privileged, it is unquestionable that NCLCV Plaintiffs have “revealed part of a privileged communication to gain an advantage in litigation.” *Id.* Indeed, one need look no further than NCLCV Plaintiffs’ Verified Complaint wherein NCLCV Plaintiffs’ entire requested relief rests on the notion that NCLCV Plaintiffs’ Optimized Maps are optimal, fair, and more appropriate than Legislative Defendants’ maps. *See* NCLCV Plaintiffs’ Verified Complaint, ¶¶ 7, 9, 93, 94, 96–97, 99, 104(a), 105(b), 108–09, 113, 118–119, 121–23, 125, 137–138, 140, 144(a), 145(b), 146(c), 147, 149, 153–80, 189–90. Thus, Plaintiffs have waived “the attorney-client privilege as to all other communications related to the same subject matter.” *Jones* at 1072.

CONTAINS CONFIDENTIAL INFORMATION-PROVISIONALLY UNDER SEAL

IV. The information sought is crucial to the case and the interests of justice require disclosure.

As set forth herein and in Legislative Defendants' prior motion to compel, the information sought regarding the creation of the Optimized Maps is crucial to Legislative Defendants' defense. Moreover, the interests of justice in this extraordinary case merit discovery into Hirsch's instructions and communications relate to the creation of the Optimized Maps. *See Mims v. Wright*, 157 N.C. App. 339, 578 S.E.2d 606, 609 (2003) (providing that relevant, privileged information is not discoverable "unless the interests of justice outweigh the protected privilege") (internal quotation omitted). Despite seeking the extraordinary relief of replacing the Enacted Plans with the Optimized Maps by judicial fiat, NCLCV Plaintiffs have been troublingly secretive about the origins, purpose, and process of preparing the Optimized Maps. Both Legislative Defendants and North Carolina voters deserve access to this information, information that can only be provided by Hirsch as the individual who directed the drawing of the Optimized Maps. The need of both the parties and the public in obtaining the information held exclusively by Mr. Hirsch is too great to countenance Mr. Hirsch hiding behind a questionable assertion of attorney-client privilege. Accordingly, the interests of justice outweigh the alleged privilege, and the Court should permit the deposition to move forward as noticed.

CONCLUSION

WHEREFORE, for the reasons set forth above, Legislative Defendants respectfully request this Court enter an order:

1. Clarifying, procedurally, if this Court's November 30, 2021 Order granting the Motion for Admission *Pro Hac Vice* of Sam Hirsch subjects Hirsch to the civil jurisdiction of this Court and allows Hirsch's deposition to be noticed and taken by Legislative Defendants; OR, IN THE ALTERNATIVE,

CONTAINS CONFIDENTIAL INFORMATION-PROVISIONALLY UNDER SEAL

2. Compelling Hirsch to sit for a deposition in this matter and testify at trial.

Respectfully submitted, this the 29th day of December, 2021.

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com
Thomas A. Farr (NC Bar No. 10871)
tom.farr@nelsonmullins.com
Alyssa M. Riggins (NC Bar No. 52366)
alyssa.riggins@nelsonmullins.com
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 329-3800

BAKER HOSTETLER LLP
Mark E. Braden* (DC Bar No. 419915)
MBraden@bakerlaw.com
Katherine McKnight* (VA Bar No. 81482)
kmcknight@bakerlaw.com
1050 Connecticut Ave NW, Suite 1100 Washington
DC 20036
* Admitted Pro Hac Vice

CONTAINS CONFIDENTIAL INFORMATION-PROVISIONALLY UNDER SEAL

CERTIFICATE OF SERVICE

It is hereby certified that on this the 29th day of December, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
*Counsel for Plaintiffs Rebecca Harper, et
al.*

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
*Counsel for the North Carolina State Board
of Elections; Damon Circosta, Stella
Anderson, Jeff Carmon III, Stacy Eggers IV,
and Tommy Tucker, in their official
capacities with the State Board of Elections*

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

CONTAINS CONFIDENTIAL INFORMATION-PROVISIONALLY UNDER SEAL

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

Counsel for Plaintiffs North Carolina League of Conservation Voters, et al.

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

Counsel for Plaintiffs North Carolina League of Conservation Voters, et al.

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org

J. Tom Boer
Olivia T. Molodanof
Hogan Lovells US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com
Counsel for Intervenor Common Cause

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com

CONTAINS CONFIDENTIAL INFORMATION - FILED PROVISIONALLY UNDER SEAL

Exhibit A

CONTAINS CONFIDENTIAL INFORMATION - FILED PROVISIONALLY UNDER SEAL
CONFIDENTIAL PURSUANT TO DECEMBER 15, 2021 PROTECTIVE ORDER

1099 NEW YORK AVENUE, NW WASHINGTON, DC 20002

JENNER & BLOCK LLP

December 23, 2021

Zachary Schauf
Tel +1 202 637 6379
zschauf@jenner.com

BY ELECTRONIC UPLOAD

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
Nelson Mullins Riley & Scarborough LLP
4140 Parklake Ave., Ste. 200
Raleigh, NC 27612
Phillip.Strach@nelsonmullins.com
Tom.Farr@nelsonmullins.com
Alyssa.Riggins@nelsonmullins.com

Mark E. Braden
Katherine McKnight
Baker Hostetler LLP
1050 Connecticut Ave., NW Ste. 1100
Washington, DC 20036
MBraden@bakerlaw.com
KMcknight@bakerlaw.com

Re: Production of Documents and Information Pursuant to December 20 Court Order

Dear Counsel:

Pursuant to the December 20, 2021 Order of the Superior Court in case number 21-CVS-015426, enclosed is a production on behalf of Plaintiffs the North Carolina League of Conservation Voters, Inc. et al. ("the NCLCV Plaintiffs"). These files are being produced via electronic file transfer, and a password will be provided under separate cover.

Please note that this letter and all files produced as part of this production are designated as "CONFIDENTIAL" within the meaning of, and subject to, the Protective Order entered by the Superior Court dated December 15, 2021. These materials comprise competitively sensitive or proprietary information, research and analysis, development and/or commercial information, and are otherwise protected from disclosure. Counsel are advised that under the Protective Order, this letter and all produced materials "shall be used by the Parties solely in connection with this litigation" and may not be used for any "political, business, commercial, competitive, personal, governmental, or other purpose or function whatsoever, and such information shall not be disclosed to anyone" except as provided by the Protective Order. For avoidance of doubt, all information produced as part of this production shall be considered "CONFIDENTIAL" even if not individually labeled or otherwise designated as such.

The Court's December 20 Order requires the NCLCV Plaintiffs to "produce to the Legislative Defendants the method and means by which the Optimized Maps were formulated and produced,

CONTAINS CONFIDENTIAL INFORMATION - FILED PROVISIONALLY UNDER SEAL

December 23, 2021

Page 2

CONFIDENTIAL PURSUANT TO DECEMBER 15, 2021 PROTECTIVE ORDER

including, but not limited to all source code, source data, input parameters, and all outputted data associated with the Optimized Maps,” and to “further identify any and all persons who took part in drawing or participated in the computerized production of the Optimized Maps.”

The NCLCV Plaintiffs do not intend to offer evidence at trial about how these maps were created. Instead, the NCLCV Plaintiffs intend to rely on them to demonstrate the error in your clients’ argument that the Enacted Plans’ extreme partisan bias was inevitable. We therefore refer to them below as “the NCLCV Plaintiffs’ demonstrative maps.”

The NCLCV Plaintiffs’ demonstrative maps were formulated and produced through the following method and means:

1. The process began with the compilation of source data relevant to congressional, senate, and house redistricting for the state of North Carolina. The data sources were public demographic data from the United States Census Bureau’s decennial census and American Community Survey, public historical electoral data from the North Carolina State Board of Elections, and shapefiles reflecting geographic and political-subdivision boundaries that form the base layers for districting and provide the means to translate data from one geographic unit (*e.g.*, Census blocks or 2012 precincts) to another (*e.g.*, 2020 VTDs).
2. The demographic, electoral, and geographic data was then organized into data sets. This involved the creation of computer scripts to compile source data and to analyze source data for use in map-optimization. For example, North Carolina State Board of Elections electoral data and demographic data were analyzed using ecological-inference tools to determine which candidates were preferred by voters from various demographic groups. Also, electoral and American Community Survey data was pro-rated onto blocks and VTDs using such scripts.
3. After the data sets were compiled, for each of the congressional, senate, and house maps, a script was used to generate a random “seed” map that complied with certain basic criteria—such as contiguous districts—as a starting place for further analysis.
4. The random seed map was only a starting point for a long chain of maps in a multi-objective “short burst” process. In general, the computer script many times a minute randomly identified two adjoining districts, erased the boundary between those two districts to temporarily create a double-size district, and then randomly re-split that double-size district into two contiguous and roughly equally populated new districts. The chain took a series (a “short burst”) of random steps, evaluated all the plans it encountered, and then chose from among the best plans so far to start its next short burst. Over the course of many steps, the maps thus changed dramatically. The source code that evaluated the plans to determine the “best” starting point for the next short burst used input parameters that incorporated key legal requirements that apply to North Carolina redistricting such as population balance, contiguity, respect for counties, geographic compactness, minority electoral opportunity, and partisan fairness. Over time, the chain tended to find maps that performed increasingly better on these various criteria. Chains were also run with different

CONTAINS CONFIDENTIAL INFORMATION - FILED PROVISIONALLY UNDER SEAL

December 23, 2021

Page 3

CONFIDENTIAL PURSUANT TO DECEMBER 15, 2021 PROTECTIVE ORDER

parameters simultaneously, to identify the best available map. For congressional districts, the chains ran statewide. For senate and house districts, chains were confined to a particular “county cluster,” given the North Carolina Supreme Court’s interpretation of the North Carolina State Constitution’s Whole County Provisions.

5. To allow the computer to robustly explore alternative possibilities, the chains just described tolerated maps with population deviations that somewhat exceeded the limits under the “one person, one vote” doctrine. So once high-performing maps were identified by these short-burst chains, they were analyzed and slightly revised with QGIS (quantum geographic information system) software to ensure, among other things, that districts’ populations satisfied mandatory equal-population rules. The map was then further analyzed, and districts were numbered to facilitate comparison with the enacted districting plans.

All computer scripts, source code, source data, input parameters, and outputted data referenced in this letter are included in the produced material. NCLCV Plaintiffs hereby produce to Legislative Defendants NCLCVP_LD_01000–NCLCVP_LD_01903. To facilitate your review, we have organized these documents into six categories:

1. **Documents Related to Data Gathering (NCLCVP LD 01000–NCLCVP LD 01552):** These documents include raw and processed data drawn from public sources, such as the United States Census Bureau and the North Carolina State Board of Elections, typically in the form of .csv or .txt data files. Several files, for instance, reflects data from elections by voting tabulation district, or VTD. This also includes certain files that reflect geographic data. For example, several files reflect the geography of North Carolina voting tabulation districts, or VTDs. These documents also contain computer scripts that were used in data analysis to pull and initially arrange data from publicly available sources.
2. **Documents Related to Data Organization (NCLCVP LD 01553–NCLCVP LD 01673):** These documents include additional shapefiles and scripts used to organize and calibrate data beyond initial data gathering and preparation. They also include scripts used to analyze North Carolina State Board of Elections electoral data and demographic data, using ecological-inference tools, to determine which candidates were preferred by voters from various demographic groups. See, for example, NCLCVP_LD_1586–NCLCVP_LD_1673.
3. **Documents Related to Initial Map Generation (NCLCVP LD 01674–NCLCVP LD 01690):** These documents include the script, as well as associated data and shapefiles, created to find initial random “seed” maps that complied with certain basic criteria, such as contiguous districts.
4. **Documents Related to the Multi-Objective Optimization Process (NCLCVP LD 01691–NCLCVP LD 01764):** These files pertain to the process of conducting the randomized map-generating process. NCLCVP_LD_1699 is the central

CONTAINS CONFIDENTIAL INFORMATION - FILED PROVISIONALLY UNDER SEAL

December 23, 2021

Page 4

CONFIDENTIAL PURSUANT TO DECEMBER 15, 2021 PROTECTIVE ORDER

script that was used to generate the randomized process. Other scripts in this Bates range support this process, and the remaining files include input files that provide input parameters encompassing key legal requirements that apply to North Carolina redistricting.

5. Documents Related to Population Balancing (NCLCVP LD 01765–NCLCVP LD 01812): These files are related to the process of balancing population and making other corrections using the maps generated from the multi-objective optimization process. These include QGIS files associated with the population-balancing process. See NCLCVP_LD_1787–NCLCVP_LD_1812.

6. Documents Related to Outputted Maps (NCLCVP LD 01813–NCLCVP LD 01903): An automated process generated analyses for the final outputted maps. The results of these analyses are reflected in these files. These include the block-assignment files for the NCLCV Plaintiffs' demonstrative maps, which allow anyone with redistricting software (including both commercial software and software that is available for free on the Internet) to upload and analyze the maps. We have previously provided these block-assignment files to you.

Sam Hirsch, a partner in Jenner & Block LLP's Washington office, directed the drawing and computerized production of the NCLCV Plaintiffs' demonstrative maps. Mr. Hirsch was assisted solely by two consulting experts, Amariah Becker of A Becker Consulting LLC and Dara Gold of Dara Gold LLC, who were retained or specifically employed to assist counsel in providing legal advice to the NCLCV Plaintiffs in anticipation of litigation or to prepare for trial and who are not expected to be called as witnesses during trial. These are all of the individuals who took part in drawing or participated in the computerized production of the NCLCV Plaintiffs' demonstrative maps.

With respect to this information, NCLCV Plaintiffs reserve all rights under, and do not waive any protections of, the Court's December 15, 2015 Protective Order, nor do they waive the protections of any and all other applicable privileges and protections. NCLCV Plaintiffs note that pursuant to that Order, any non-party witness must agree by affidavit, declaration, or sworn statement before the Court, that he or she has agreed to be bound by the Court's Protective Order. Pursuant to Paragraph 10(c) of the Protective Order, if you disclose, summarize, or otherwise make available this Confidential Information in whole or in part to any consulting or testifying expert retained by you for purposes of this litigation, we will require that you first provide the NCLCV Plaintiffs with copies of the executed "Exhibit A" to the Protective Order.

Best regards,

/s/ Zachary Schauf

Zachary Schauf

Enclosures

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

REBECCA HARPER, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2021 DEC 29 P 1:35

21 CVS 015426

WAKE CO. C.S.C.
BY

Consolidated with
21 CVS 500085

**LEGISLATIVE DEFENDANTS' MOTION TO SEAL THEIR
MOTION FOR CLARIFICATION, AND IN THE ALTERNATIVE, MOTION TO
COMPEL**

NOW COME President *Pro Tempore* Philip E. Berger, Senator Warren Daniel, Senator Ralph E. Hise, Senator Paul Newton, Speaker Timothy K. Moore, and Representative Destin Hall (collectively, "Legislative Defendants"), by and through undersigned counsel and pursuant to Paragraph 17 of this Court's December 15, 2021 Protective Order and Rule 27 of the General Rules of Practice for the Superior and District Courts, and move to seal Legislative Defendant's Motion for Clarification and, in the Alternative, Motion to Compel ("Motion for Clarification"), filed contemporaneously herewith. Legislative Defendants show the Court as follows:

BACKGROUND

1. On 15 December 2021, this Court entered a Protective Order (“Protective Order”) governing information, documents, and testimony exchanged in this litigation that the producing party believes should be protected from disclosure to third parties.

2. On 20 December 2021, this Court entered an Order granting Legislative Defendants’ Motion to Compel and requiring NCLCV Plaintiffs to produce information and documents relating to “the method and means by which the Optimized Maps were formulated and produced, including, but not limited to all source code, source data, input parameters, and all outputted data associated with the Optimized Maps,” and to “further identify any and all persons who took part in drawing or participated in the computerized production of the Optimized Maps.”

3. On 23 December 2021, NCLCV Plaintiffs produced a cover letter, information, and documents pursuant to this Court’s Order but designated the entirety of its response as “Confidential Pursuant to December 15, 2021 Protective Order,” even information such as the identity of persons involved in the drawing of their maps.

4. On 27 December 2021, Legislative Defendants issued a “Notice of Deposition” to the person identified within their December 23rd letter as having “directed the drawing and computerized production” of NCLCV Plaintiffs’ maps.

5. On 28 December 2021, NCLCV Plaintiffs’ counsel indicated their belief that the Notice of Deposition is improper.

6. Accordingly, Legislative Defendants now seek relief from this Court allowing them to depose the individual who directed the drawing of NCLCV Plaintiffs’ maps.

ARGUMENT

NCLCV Plaintiffs’ Improper “Confidential” Designations Prompt this Motion to Seal

7. Contemporaneous with this Motion, Legislative Defendants have filed a Motion for Clarification seeking clarification from the Court that a Notice of Deposition is a sufficient means of obtaining the deposition of the individual who directed the drawing of the NCLCV Plaintiffs’ “Optimized Maps.” That Motion asks, in the alternative, that the Court compel the deposition.

8. In order to identify and explain the relief sought in their Motion for Clarification, Legislative Defendants have no choice but to describe information and documents that NCLCV Plaintiffs have designated as “CONFIDENTIAL,” such as the name of the individual whose deposition has been noticed and the contents disclosed in the 23 December 2021 cover letter that NCLCV Plaintiffs included with their document production. *See* General Rules of Practice for the Superior and District Courts (“G.R.P.”), Rule 27(b)(2)(a), (b).

9. Paragraph 17 of this Court’s December 15 Protective Order states:

Should any party seek to file with the Court or introduce into evidence or information they believe should not be made public and therefore should be placed under seal they must follow the procedures set for in Rule 27 of the General Rules of Practice.

10. Therefore, filing their Motion for Clarification requires Legislative Defendants to file this contemporaneous Motion to Seal because NCLCV Plaintiffs have designated documents and information described in that Motion as “Confidential,” and the terms of the Protective Order require Legislative Defendants to file documents disclosing information designed “Confidential” provisionally under seal. *See* G.R.P., Rule 27(b)(2)(a), (b).

11. Indeed, absent NCLCV Plaintiffs’ consent, the lack of which is evidenced by the Motion for Protective Order they filed this morning, the Protective Order provides no reasonable

alternative to filing this Motion to Seal if Legislative Defendants are to be able to file their Motion for Clarification. *See* G.R.P., Rule 27(b)(2)(c), (f)(ii).

12. With respect to whether the information should be accessible only to counsel of record, the terms of the Protective Order already permit the parties access due to NCLCV Plaintiffs' designation of this information and these documents as "Confidential" rather than "Highly Confidential." Therefore, this Court need not further restrict access to the Motion for Clarification or its exhibits pursuant to this Motion to Seal. *See* G.R.P., Rule 27(b)(2)(d).

13. Legislative Defendants do not believe that these documents should be sealed for any length of time because the "Confidentiality" designation necessitating this Motion is improper, as discussed further below. *See* G.R.P., Rule 27(b)(2)(e).

14. Because these documents and information have been produced pursuant to written discovery requests to a Party to this case, the provisions of Rule 27(b)(2)(g) of the General Rules of Practice are inapplicable to this Motion.

15. Legislative Defendants do not believe a hearing on this Motion is necessary, as provided for by Rule 27(b)(4) of the General Rules of Practice.

NCLCV Plaintiffs' Confidentiality Designations are Inappropriate

16. As explained above, Legislative Defendants move to seal their Motion for Clarification solely because the terms of the Protective Order require them to do so. Legislative Defendants, however, do not believe that the "Confidentiality" designations triggering this Motion are appropriate and, accordingly, do not think an order sealing their Motion for Clarification is appropriate either.

17. Legislative Defendants do not oppose "Confidentiality" designations on truly proprietary materials such as NCLCV's source codes or scripts.

18. Information such as the identity of NCLCV’s map drawers and the process they undertook to draw those maps, however, is quantifiably different. Such information cannot reasonably be described as “competitively sensitive or proprietary” so as to warrant a “Confidentiality” designation consistent with the letter or spirit of the Protective Order. NCLCV Plaintiffs have failed to identify the “good faith claim of need of protection from disclosure” required by the Protective Order, see Protective Order at ¶ 2, and allowing NCLCV Plaintiffs to remain secretive about this basic information contradicts well-established norms in North Carolina with respect to open courts and public access to court documents, see, e.g., *Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 463, 515 S.E.2d 675, 685 (1999) (noting court’s inherent authority to shield court records should “only” be exercised when “[i]ts use is required in the interest of the proper and fair administration of justice or where, for reasons of public policy, the openness ordinarily required of our government will be more harmful than beneficial.”). NCLCV Plaintiffs have made no such showing here, nor can they. Indeed, robust discovery has been had with respect to Legislative Defendants’ map drawers and map drawing processes.

19. Indeed, NCLCV Plaintiffs not only use the “Optimized Maps” in their verified complaint as the basis for alleging deficiencies in the plans enacted by the General Assembly and as the basis for their expert report, they expressly ask this Court to impose the “Optimized Maps” on North Carolina in the event the Court decides that remedial maps adopted by the General Assembly are constitutionally deficient. As such, information about the formation of these maps, including knowledge possessed by the person who directed their creation, go to the core of NCLCV Plaintiffs’ claims in this matter. Improper restrictions on the use of non-proprietary information as basic as the identity of persons who directed the map drawing fundamentally and unfairly prejudices Legislative Defendants’ ability to defend against the claims made by NCLCV Plaintiffs.

20. Accordingly, should the Court determine, in reviewing Legislative Defendants' contemporaneously-filed Motion for Clarification, that information included in that Motion is not property designated as "Confidential," Legislative Defendants would concede that this Motion to Seal is moot and the relief sought thereby unnecessary.

CONCLUSION

WHEREFORE, for the reason set forth above, the Movants respectfully pray that the Court seal their contemporaneously-filed Motion for Clarification, unless the Court should determine these documents are not appropriately designated as "Confidential," in which this Motion would be moot.

Respectfully submitted, this the 29th day of December, 2021.

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com
Thomas A. Farr (NC Bar No. 10871)
tom.farr@nelsonmullins.com
Alyssa M. Riggins (NC Bar No. 52366)
alyssa.riggins@nelsonmullins.com
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 329-3800

BAKER HOSTETLER LLP
Mark E. Braden* (DC Bar No. 419915)
MBraden@bakerlaw.com
Katherine McKnight* (VA Bar No. 81482)
kmcknight@bakerlaw.com
1050 Connecticut Ave NW, Suite 1100 Washington
DC 20036
* Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

It is hereby certified that on this the 29th day of December, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com
Counsel for Plaintiffs North Carolina League of Conservation Voters, et al.

Sam Hirsch
Jessica Ring Amunson
Kali Bracey

Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
Counsel for the North Carolina State Board of Elections; Damon Circosta, Stella Anderson, Jeff Carmon III, Stacy Eggers IV, and Tommy Tucker, in their official capacities with the State Board of Elections

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
Counsel for Plaintiffs North Carolina League of Conservation Voters, et al.

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900

Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
Katelin@scsj.org

J. Tom Boer
Olivia T. Molodanof
Hogan Lovells US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com
Counsel for Intervenor Common Cause

s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426, 21 CVS 500085

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, INC.;
HENRY M. MICHAUX, JR., et al.,

Plaintiffs,

REBECCA HARPER, et al.,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

**NCLCV PLAINTIFFS’
OPPOSITION TO LEGISLATIVE
DEFENDANTS’ MOTION TO
CLARIFY OR IN THE
ALTERNATIVE TO COMPEL**

The NCLCV Plaintiffs file this opposition to the Legislative Defendants’ motion for clarification, or in the alternative, to compel the deposition and trial testimony of NCLCV Plaintiffs’ litigation counsel of record, Sam Hirsch.¹ The NCLCV Plaintiffs likewise oppose the Legislative Defendants’ extraordinary attempt to disqualify one of their lead attorneys from serving as their advocate on the eve of trial, which request appears at page seven of the Legislative Defendants’ motion.

The NCLCV Plaintiffs’ motion for a protective order already explains why the deposition and trial testimony of Mr. Hirsch is not permissible under North Carolina law given that the information the Legislative Defendants seek from Mr. Hirsch is (1) available from other means, including interrogatories the Legislative Defendants have chosen not to propound, (2) protected by the attorney-client and work-product privileges, and (3) not even relevant, let alone crucial to

¹ The NCLCV Plaintiffs address the Legislative Defendants’ Motion to Seal by separate filing.

Legislative Defendants’ preparation of their case. The Court should reject the Legislative Defendants’ attempts to turn this trial into a sideshow about the NCLCV Plaintiffs’ counsel. In further support of their motion for a protective order and in opposition to the Legislative Defendants’ motion to clarify or compel, the NCLCV Plaintiffs state the following:

ARGUMENT

I. Mr. Hirsh’s Deposition Testimony Cannot Be Procured by a Notice of Deposition.

Mr. Hirsch’s deposition cannot go forward on Friday morning based on an improper notice of deposition. A party’s lawyer is not a party and cannot be deposed without an enforceable subpoena. This is clear from *Blue Ridge Pediatric & Adolescent Medicine, Inc. v. First Colony Healthcare, LLC*, No. 11 CVS 127, 2012 WL 3249553 *7 (N.C. Super. Ct. Aug. 9, 2012), where the court concluded that legal counsel is not a party to the action and a subpoena duces tecum is appropriate to make discovery of documentary evidence held by counsel. There, the court also cited *Kelley v. Agnoli*, 695 S.E.2d 137, 147 (N.C. Ct. App. 2010), which discussed Rule 45’s protections and held that a party’s law firm was not itself a party. Indeed, *Kelley* stated that “service of a subpoena on the attorneys representing a party in the pending litigation is an extraordinary act that may warrant greater scrutiny and protection from the court and not less.” 695 S.E. 2d at 147.

There is no legal basis for the Legislative Defendant’s claim that they should be permitted to depose Mr. Hirsch simply because he has been admitted *pro hac vice* in this matter. The fact remains that Mr. Hirsch is an attorney, not a party. And under Rule 30 of the North Carolina Rules of Civil Procedure, a subpoena—not a deposition notice—is required to depose a non-party. *See* N.C. R. Civ. P. 30(a). Mr. Hirsch’s admission *pro hac vice* does not transform him from litigation counsel into a party. The statute governing admission of out-of-state attorneys is clear: to be

admitted *pro hac vice*, the attorney “agrees to be subject to the orders and amenable to the disciplinary action and the civil jurisdiction of the General Court of Justice and the North Carolina State Bar in all respects *as if the attorney were a regularly admitted and licensed member of the Bar of North Carolina in good standing.*” N.C. Gen. Stat. § 84-4.1(3) (emphasis added); *see Couch v. Priv. Diagnostic Clinic*, 146 N.C. App. 658, 670, 554 S.E.2d 356, 365 (2001) (“Under N.C. Gen.Stat. § 84–28, attorneys admitted to practice *pro hac vice* are subject to the same disciplinary jurisdiction of this State as are attorneys licensed to practice here.”). In other words, when an out-of-state attorney is admitted to practice in North Carolina, he becomes subject to the jurisdiction of the Court to the same degree as a North Carolina attorney. This has nothing to do with whether he should be treated as a party under the Rules of Civil Procedure. If Mr. Hirsch was a North Carolina attorney, seeking to force him to appear for deposition by notice would be equally improper—because he is an attorney, not a party, a fact that has nothing to do with his admission to practice in this Court.

Indeed, the Legislative Defendants and their counsel well-know that they cannot proceed by notice of deposition here. One of the cases they rely on in their motion, *Ohio A. Philip Randolph Institute v. Smith*, No. 1:18-cv-00357, ECF No. 121 (W.D. Ohio, Dec. 15, 2018), concerned an attempt to obtain “nine emails” from E. Mark Braden, who is counsel to the Legislative Defendants here. *Id.* at 1. Mr. Braden was representing the Ohio government, which was a party to that case, just as he here is representing the North Carolina General Assembly. To try to obtain those documents, the *Ohio* Plaintiffs did not issue a ***document request***, as they could have issued to a party to the case. Instead, they sought “subpoenas” to “serve[] on third-party E. Mark Braden.” *Id.* That was the proper mechanism. And the Legislative Defendants could have pursued that path here, as early as the evening of Thursday, December 23, 2021. The Legislative Defendants cannot

now complain about the need to undertake that process, when *their own counsel* has himself obtained the protections of that process.

II. The Cases Cited by Legislative Defendants Demonstrate that a Deposition of Mr. Hirsch Is Neither Necessary Nor Appropriate.

The NCLCV Plaintiffs already showed in their motion for a protective order that Legislative Defendants cannot meet their burden to show that a deposition of the NCLCV Plaintiffs’ litigation counsel is necessary or appropriate under the three prongs set forth in the seminal case of *Shelton v. American Motors Corp.*, 805 F.2d 1323 (8th Cir. 1986). The cases the Legislative Defendants cite in support of their argument that they should be permitted to depose Mr. Hirsch provide no support for their claim that North Carolina courts have permitted depositions of litigation counsel in circumstances remotely like those presented here.

For example, they cite *Green v. Moog Music, Inc.*, No. 121CV00069MOCWCM, 2021 WL 4130530, at *2 (W.D.N.C. Sept. 10, 2021). This decision is an unpublished ruling by a federal magistrate, currently being appealed in the Fourth Circuit. More importantly, it did not involve an attorney like Mr. Hirsch, who had absolutely no involvement with the facts of this litigation prior to his engagement as litigation counsel. *Green* involved a sex discrimination claim brought by Hannah Green against the Moog Music company. Her lawyer was also her fiancé or husband—and one of only four people present at an event where she was allegedly victimized. *Id.* at *2. He was also, by virtue of their relationship, in a “unique position to testify regarding Plaintiff’s allegations of emotional distress.” Accordingly, when the magistrate disqualified her counsel, it was because he was a necessary witness to the factual events that formed the basis for her subsequent complaint—a situation that bears no relation to the issues here.

Blue Ridge Pediatric & Adolescent Med., Inc. v. First Colony Healthcare, LLC, No. 11 CVS 127, 2012 WL 3249553, at *6 (N.C. Super. Aug. 9, 2012), directly supports the position

taken by the NCLCV Plaintiffs, not that of the Legislative Defendants. In *Blue Ridge*, a party sent a subpoena—not a deposition notice—to the firm that was serving as plaintiff’s counsel. The case states that discovery on a non-party, including counsel, should be sought through a subpoena. *See id.* at *7 (“The Harris Firm represents Plaintiffs as legal counsel and, thus, is not a party to the action.”). *Blue Ridge*, like *Green*, involved attempts to take discovery on counsel with knowledge of the underlying facts of the case. The law firm, in addition to representing the Plaintiffs, was directly involved in the real estate transactions at issue in the litigation, including reviewing a lease and operating agreement *four years* prior to the filing of the complaint. *Id.* at *2. Notwithstanding these facts, the Court *granted* the firm’s motion for a protective order and *refused to allow a deposition of opposing litigation counsel*. *See id.* at *11 (finding “good cause for entry of a protective order prohibiting Defendants from seeking the deposition of Thomas M. Ward regarding any matter in this case, absent authorization by the Court”).

Finally, the Legislative Defendants cite *Edison v. Acuity Healthcare Holdings, Inc.*, No. 15 CVS 2745, 2016 WL 6518800 (N.C. Super. Nov. 2, 2016), in support of their request to depose Mr. Hirsch and examine him at trial. Once again, that case could hardly be more different from this one. In *Edison*, the plaintiff in an employment discrimination suit sought to depose the defendant’s in-house counsel. *Id.* at *1. As in *Green* and *Blue Ridge*, the lawyer had personal knowledge of the underlying facts of the case—she was an in-house lawyer whose “responsibilities may include involvement in [defendant’s] business affairs.” *Id.* Indeed, she had been identified by the defendant’s Rule 30(b)(6) witness as having relevant knowledge of the facts. *Id.* But just as important, the lawyer to be deposed in *Edison* was not serving as trial counsel; to the contrary, there was “no evidence showing that Ms. Babson has been substantially involved with overseeing the litigation in this matter.” *Id.* at *6. Under these circumstances, the Court decided not to bar

her testimony because “the deposition is *not targeted solely at eliciting information relating to [defendant’s] litigation strategy.*” *Id.* By contrast, Mr. Hirsch has no such personal knowledge. Instead, unlike the deposition in *Edison*, the Legislative Defendants’ efforts can only be “targeted solely at eliciting information relating to [plaintiffs’] litigation strategy.” Indeed, they frankly admit that the *entire basis* of their request is to probe Mr. Hirsch’s “thought process.” Mot. 7. That is improper.

In sum, although the Legislative Defendants lead with the broad assertion that “North Carolina courts have ruled that litigation counsel may be deposed under certain circumstances,” none of the cases they cite bears any resemblance to this case. None of the three prongs of *Shelton* are met here. First, the Legislative Defendants have not even attempted to propound interrogatories to the NCLCV Plaintiffs or otherwise obtain the information they seek through less intrusive means. Second, as further described below, the information they seek is clearly privileged as they concede they are looking for testimony on an attorney’s “thought process” about litigation strategy and remedy. Mot. 7. Third, the information they seek is not relevant, let alone crucial to the case.

III. The Suggestion that Mr. Hirsch Should Be Disqualified on the Eve of Trial Should Be Rejected.

Buried on page seven of their motion is the Legislative Defendants’ suggestion that Mr. Hirsch is subject to disqualification under Rule 3.7 of the North Carolina Rules of Professional Conduct because he cannot serve as both a fact witness and an advocate. This extraordinary attempt to disqualify one of the NCLCV Plaintiffs’ lead trial attorneys should be rejected as it threatens to deprive the NCLCV Plaintiffs of their chosen counsel just five days before trial begins. *Cf. Matter of R.D.*, 376 N.C. 244, 255 (2020) (upholding trial court’s refusal to require attorney to testify because of “the existence of the potential for an ethical conflict pursuant to Rule 3.7 of the

Rules of Professional Conduct”). Mr. Hirsch is the attorney who will put on the NCLCV Plaintiffs’ witness, Dr. Duchin, and will cross-examine some of the Legislative Defendants’ witnesses. Disqualifying him from serving in that role at trial would be extremely prejudicial to the NCLCV Plaintiffs and violate their substantial rights. *See Harris & Hilton, P.A. v. Rasette*, 252 N.C.App. 280, 282-83 (2017) (holding that a trial court’s order disqualifying a party’s chosen trial counsel affects a substantial right that would otherwise be lost in the absence of an immediate appeal); *Robinson & Lawling, L.L.P. v. Sams*, 161 N.C. App. 338, 339 n.3 (2003) (“an order disqualifying counsel is immediately appealable because it affects a substantial right”).

For the reasons previously explained in their motion for a protective order, Mr. Hirsch clearly is not a “necessary” witness under Rule 3.7 and therefore disqualification is impermissible. *See, e.g., Cole v. Champion Enterprises, Inc.*, No. 1:05CV415, 2006 WL 8447925, at *7 (M.D.N.C. Aug. 25, 2006) (refusing to disqualify plaintiff’s counsel as a “necessary witness” because the testimony defendants sought to obtain from counsel was available from other sources and protected by privilege); *Ohio Cas. Ins. Co. v. Firemen’s Ins. Co. of Washington, D.C.*, No. 5:07-CV-149-D, 2008 WL 441840, at *2 (E.D.N.C. Feb. 13, 2008) (denying motion to disqualify under Rule 3.7 because counsel was not a necessary witness given that “there [were] others, in addition to [counsel], who can testify regarding [the subject matter]”). Indeed, as the NCLCV Plaintiffs have already explained, Mr. Hirsch is not a “witness” at all. Whatever information he could offer about how the NCLCV demonstrative plans were drawn would shed no light on how the *Enacted Plans* were drawn. The Legislative Defendants’ attempts to make this case about Mr.

Hirsch’s thought processes in preparing a proposed remedy for their egregious gerrymander should be rejected.

IV. Legislative Defendants Seek Privileged Information.

Legislative Defendants claim that the information they seek from Mr. Hirsch is not privileged because (1) the NCLCV Demonstrative Maps were not made in the course of Mr. Hirsch delivering legal advice; and (2) the NCLCV Plaintiffs have waived any privilege by referencing their maps in their filings. They are wrong on both counts.

First, the Legislative Defendants claim that there is a “redistricting” exception to the attorney-client privilege and that anyone who “assist[s] in drawing redistricting maps” is acting as a “consultant,” not a lawyer. Mot. 8-9. Their cases, however, do not support that argument. The individual at issue in *Baldus v. Brennan* was “not an attorney.” *Baldus v. Brennan*, No. 11-CV-1011 JPS-DPW, 2011 WL 6385645, at *1 (E.D. Wis. Dec. 20, 2011). Moreover, although that individual argued that he provided services in conjunction with legal representation, the court found that he “was consulted by the [state] Legislature independently ... as opposed to [the law firm] Michael Best” having hired him.” *Id.* And yet more fundamentally, the consultant there was hired by the state Legislature in order to help draw its 2011 redistricting maps in the first instance. *Baldus v. Brennan*, No. 11-CV-1011 JPS-DPW, 2011 WL 6122542, at *1 (E.D. Wis. Dec. 8, 2011), *order clarified*, No. 11-CV-1011 JPS-DPW, 2011 WL 6385645 (E.D. Wis. Dec. 20, 2011). It should not be a surprise that Courts have permitted discovery into the process a *legislature* uses in redistricting. That is the *very opposite* of this case. Here, Mr. Hirsch was retained to challenge—that is, to litigate against—the maps the General Assembly enacted, which were widely expected to be (and in fact were) egregiously unfair maps that gerrymandered by party and diluted the voting strength of Black voters. Mr. Hirsch undertook his work to create the NCLCV

Demonstrative Maps *in order to* challenge the General Assembly’s maps—to show that their partisan gerrymandering and racial vote dilution did not flow from North Carolina’s political geography, and to identify for North Carolina’s courts a remedy for the General Assembly’s unconstitutional actions.

The Legislative Defendants’ sole additional case, *Ohio A. Philip Randolph Institute v. Smith*, No. 1:18-cv-00357, ECF No. 121 (W.D. Ohio, Dec. 15, 2018), is even farther afield. That case did not involve an attempt to depose or call as a witness a lawyer who participated in challenging redistricting maps as unlawful. Rather, it concerned “subpoenas” for “nine emails.” *Id.* at 1. And it turned on the basic principle that documents “contain[ing] only facts, data and maps ... are not protected by the attorney client privilege” and do not become privileged “simply because they are attached to an email on which a lawyer.” *Id.* at 6-7. This case, again, is the very opposite: The Motion expressly premises its requests for a deposition and trial testimony on the claim that the Legislative Defendants wish to explore Mr. Hirsh’s “thought process.” Mot. 7. The *Ohio* plaintiffs never sought to explore Mr. Braden’s thought processes—and properly so, given how clearly such processes are protected by attorney-client privilege and work-product doctrines.

In sum, Sam Hirsch has never had any involvement in the creation of the redistricting maps being challenged in this case. Discovery on the maps he was involved in creating—demonstrative maps create to support the NCLCV’s legal arguments in this litigation—will not reveal any information going to the “heart of the dispute.” To the contrary, it is a sideshow, and one that has already consumed an inordinate amount of the parties’ time on the eve of trial. The Legislative Defendant’s efforts to depose Mr. Hirsch and examine him at trial because of the efforts he has made in this litigation, as counsel to the NCLCV Plaintiffs, should end. In any event, to the extent the Legislative Defendants are taking the position based on the caselaw discussed above that legal

advice offered in connection with redistricting is not privileged, the NCLCV Plaintiffs assume that the Legislative Defendants’ counsel will have no objection to sitting for depositions and being called as witnesses at trial themselves given the Legislative Defendants’ admission in their response to interrogatories that “Attorneys at Nelson Mullins and Baker Hostetler provided legal advice in connection with the 2021 redistricting.” Legislative Defendants’ Interrogatory Responses at 5 (Dec. 28, 2021).

Second, the Legislative Defendants fare no better with the claim that the “timing of Hirsch’s involvement” renders attorney-client privilege and the work-product doctrine inapplicable. They speculate that Mr. Hirsch’s work on the maps at issue could not have come in the course of providing legal advice or in anticipation of litigation because the “General Assembly passed the Enacted Plans on November 4, 2021”; because “NCLCV Plaintiffs filed their Verified Complaint and Motion for Preliminary Injunction” a “mere twelve (12) days later”; and it is supposedly “almost impossible to complete such detailed analysis within that time.” Mot. 9.

That argument, however, presumes that Mr. Hirsch could not have been acting as a lawyer or pursuing litigation until November 4. And that argument is obviously wrong. Many North Carolinians predicted that the maps the General Assembly would enact would be unlawful. For example, as this Court well knows, one of the *Common Cause* Plaintiffs filed a lawsuit on October 29, 2021, whose basis was that the General Assembly was likely to enact unlawful maps. *See generally NAACP v. Berger*, No. 21-CVS-014476 (suit filed Oct. 29, 2021). It is hardly surprising that those plaintiffs were not alone in anticipating that the General Assembly’s maps would be unlawful. Indeed, here Mr. Hirsch was retained to potentially challenge the General Assembly’s maps before November 4—although it was only after November 4 that the maps that became the

NCLCV demonstrative maps were produced. Mr. Hirsch’s work concerning these maps thus falls within the heartland of the work-product doctrine and the attorney-client privilege.²

Third, the NCLCV Plaintiffs have not waived any privilege simply by offering their maps in this litigation. No one would contend, for example, that a party who offers a damages remedy in litigation has waived the attorney-client privilege as to communications with counsel in creating that remedy. Or that counsel could be deposed about her thought process in crafting the proposed damages remedy. Indeed, the Legislative Defendants fundamentally misunderstand waiver doctrine. They argue that disclosure of the NCLCV Demonstrative waives the protections and privileges to all communications relating to the maps. That is wrong. The Legislative Defendants’ waiver arguments relate to disclosure of privileged *communications*. Mot. 10. The NCLCV Demonstrative Maps are not themselves privileged; they were prepared for use in this litigation. The underlying privileged communications and work product, however, *have not* been disclosed. Where the substance of an attorney-client communication has not been disclosed, there is no waiver. *See Roth v. Aon Corp.*, 254 F.R.D. 538, 541 (N.D. Ill. 2009) (Draft Form 10K sent to in-house counsel for legal advice was privileged even though the intention was to file the final Form 10K with the SEC; “Most courts have found that even when a final product is disclosed to the public, the underlying privilege attached to drafts of the final work product remains intact.”).

Moreover, the Legislative Defendants also fail to address the separate and distinct protection that the work-product doctrine provides. When *work product* is disclosed in litigation, there is no subject-matter waiver; instead, the scope of waiver is limited to the work product actually disclosed and does not result in subject-matter waiver. *Pittman v. Frazer*, 129 F.3d 983,

² The NCLCV Plaintiffs stand ready to verify the facts stated in this motion via affidavit, which they have not submitted with this response simply because of the extraordinarily expedited schedule applicable here.

988 (8th Cir. 1997) (disclosure of documents to adversary generally waives work product only as to the documents disclosed); *Duplan Corp. v. Deering Milliken, Inc.*, 5409 F.2d 1215, 1222-23 (4th Cir. 1976) (“Broad concepts of subject matter waiver . . . are inappropriate when applied to Rule 26(b)(3).”)

Finally, the Legislative Defendants ignore entirely the guiding principle that North Carolina courts “tread[] cautiously in the area of implied waiver,” which “should not be applied cavalierly.” *Ford v. Jurgens*, No. 20 CVS 4896, 2021 WL 4595673, at *6 (N.C. Super. Oct. 5, 2021). Even when—unlike here—a waiver has occurred, courts narrowly construe any waiver so that the “result is remedial, rather than punitive” so as to avoid one side receiving an “unfair advantage.” *Id.* Here, far from suffering any unfairness, the Legislative Defendants have already received voluminous discovery concerning the NCLCV Demonstrative Maps, and they have passed up chances to seek additional information via interrogatories. Instead, they seek Mr. Hirsch’s deposition and testimony to harass their adversary’s litigation counsel on eve of trial. No principle of fairness supports the tactics they employ here.

Indeed, notwithstanding the Legislative Defendants’ repeated attempts to confuse the issue, the NCLCV Plaintiffs were clear in their Verified Complaint about how they intended to use their Demonstrative Maps: They asked the Court to look to the “results” of those maps. Verified Compl. ¶ 7. And they explained that those results would show that it was possible to “avoid the partisan gerrymandering and racial vote dilution that mark the Enacted Plans, while also improving on the Enacted Plans’ compliance with the laws and legitimate policies governing redistricting in North Carolina.” *Id.* Nothing about that use of the maps waived attorney-client privilege or work-product protections, particularly given the stringent standard North Carolina courts apply to claims of implied waiver.

Finally, contrary to what Legislative Defendants claim, there is no “interests of justice” exception that overrides the attorney-client privilege. Defendants cite *Mims v. Wright*, 157 N.C. App. 139, 578 S.E.2d 606, 609 (2003), for the proposition that the interests of justice can sometimes outweigh a privilege. But as the court in *Mims* explained, the statute creating the physician-patient privilege expressly provides that this privilege is qualified and may be overridden by the interests of justice. In contrast, the attorney-client privilege established at the common law is absolute unless waived. *State v. Murvin*, 304 N.C. 523, 531, 284 S.E.2d 289, 294 (1981) (where the attorney-client privilege is established, communications “are privileged and may not be disclosed”). In any event, there is nothing here about the “interests of justice” that should require an attorney to testify about his own thought processes, mental impressions, and advice he provided to clients in connection with the NCLCV Demonstrative Maps.

CONCLUSION

For the foregoing reasons, the Court should deny the Legislative Defendants’ motion for clarification or to compel, deny the Legislative Defendants’ request to disqualify Mr. Hirsch from serving as NCLCV Plaintiffs’ counsel at trial, and order that the deposition of Mr. Hirsch cannot take place and that the Legislative Defendants must strike Mr. Hirsch from their witness list and may not call Mr. Hirsch as a witness at trial.

Dated: December 29, 2021

Respectfully submitted,

JENNER & BLOCK LLP

Sam Hirsch*
Jessica Ring Amunson*
Kali Bracey*
Zachary C. Schauf*
Karthik P. Reddy*
Urja Mittal*
JENNER & BLOCK LLP
1099 New York Avenue NW, Suite 900
Washington, D.C. 20001
(202) 639-6000
shirsch@jenner.com
zschauf@jenner.com

David Bradford*
JENNER & BLOCK LLP
353 North Clark Street
Chicago, IL 60654
(312) 923-2975
dbradford@jenner.com

* *Admitted pro hac vice*

ROBINSON, BRADSHAW & HINSON, P.A.

/s/ Stephen D. Feldman
Stephen D. Feldman
North Carolina Bar No. 34940
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
(919) 239-2600
sfeldman@robinsonbradshaw.com

Adam K. Doerr
North Carolina Bar No. 37807
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
(704) 377-2536
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
North Carolina Bar No. 50247
ROBINSON, BRADSHAW & HINSON, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
(919) 328-8800
ezimmerman@robinsonbradshaw.com

Counsel for NCLCV Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon each of the parties to this action by electronic mail to counsel at the e-mail addresses indicated below, in accordance with North Carolina Rule of Civil Procedure 5(b)(1)(a):

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraig@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, DC 20002
lmadduri@elias.law
jshelly@elias.law
gwhite@elias.law

Abha Khanna
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
akhanna@elias.law

Elisabeth S. Theodore
R. Stanton Jones
John Cella
Samuel F. Callahan
ARNOLD AND PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
john.cella@arnoldporter.com
stanton.jones@arnoldporter.com
samuel.callahan@arnoldporter.com

Phillip J. Strach
Thomas A. Farr
Gregory P. McGuire
D. Martin Warf
John E. Branch III
Alyssa M. Riggins
Nathaniel J. Pencook
NELSON MULLINS RILEY & SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
phillip.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
greg.mcguire@nelsonmullins.com
martin.warf@nelsonmullins.com
john.branch@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
nate.pencook@nelsonmullins.com

Mark E. Braden
Katherine McKnight
Patrick T. Lewis
Sean Sandološki
Richard Raile
BAKER HOSTETLER LLP
1050 Connecticut Avenue NW,
Suite 1100
Washington, DC 20036
mbraden@bakerlaw.com
kmcknight@bakerlaw.com
plewis@bakerlaw.com
ssandološki@bakerlaw.com
rraile@bakerlaw.com

Counsel for Plaintiffs Representative Destin Hall, Senator Warren Daniel, Senator Ralph E. Hise, Jr., Senator Paul Newton, Representative Timothy K. Moore, and Senator Phillip E. Berger

*Counsel for Plaintiffs Rebecca Harper,
et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Jeffrey Loperfido
SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org
jeffloperfido@scsj.org

J. Tom Boer
Olivia T. Molodanof
HOGAN LOVELLS US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
oliviamolodanof@hoganlovells.com

Counsel for Plaintiff Common Cause

Terence Steed
Stephanie Brennan
Amar Majmundar
N.C. DEPARTMENT OF JUSTICE
Post Office Box 629
Raleigh, NC 27502-0629
tsteed@ncdoj.gov
sbrennan@ncdoj.gov
amajmundar@ncdoj.gov

*Counsel for Defendants the North Carolina
State Board of Elections, Damon Circosta,
Stella Anderson, Jeff Carmon III, Stacy Eggers
IV, Tommy Tucker, Karen Brinson Bell; and the
State of North Carolina*

This 29th day of December, 2021.

/s/ Stephen Feldman

Stephen Feldman

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426, 21 CVS 500085

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, INC.;
HENRY M. MICHAUX, JR., et al.,

Plaintiffs,

REBECCA HARPER, et al.,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

**NCLCV PLAINTIFFS’ RESPONSE
TO LEGISLATIVE DEFENDANTS’
MOTION TO SEAL**

The NCLCV Plaintiffs hereby respond to the Legislative Defendants’ Motion to Seal Their Motion for Clarification.

The Motion to Seal asks the Court to seal the Motion for Clarification pursuant to the Protective Order. It does so because the Motion for Clarification describes, and includes as an attachment, a December 23, 2021 cover letter (the “Cover Letter”) that the NCLCV Plaintiffs designated as confidential because it contains sensitive and proprietary information. The Motion simultaneously asserts, however, that the NCLCV Plaintiffs “improper[ly]” designated the Cover Letter as confidential. Mot. 4. It thus invites the Court to deny the Motion as “moot.” *Id.* at 6.

The Legislative Defendants are wrong that the Cover Letter does not contain confidential information. At the outset, however, the NCLCV Plaintiffs emphasize that they do not believe that any of the information *contained in the body of the Legislative Defendants’ Motion for Clarification, and in the Alternative, Motion to Compel*—as opposed to the Cover Letter attached

to that motion—is confidential or need be sealed. That is, the NCLCV Plaintiffs agree that the Motion for Clarification may enter the public record, including its discussion of Mr. Hirsch related to the NCLCV Demonstrative Maps. Indeed, the NCLCV Plaintiffs filed their own Motion for Protective Order this morning publicly and did not seek that similar information be sealed. Instead, the NCLCV Plaintiffs direct their arguments here solely to the proposition that the Cover Letter itself is properly sealed.

The Cover Letter was properly designated as confidential. *See* G.R.P., Rule 27(b)(2)(b). As the Legislative Defendants concede, “proprietary materials” including “source codes or scripts” are properly designated as confidential and filed, if at all, only under seal. Mot. 4. This Court recognized the same thing in issuing its Protective Order. Dec. 15, 2021 Order at 6 (“Protective Orders ... are ‘essential to the efficient functions of the discovery process’ in cases involving confidential information” (citing *Longman v. Food Lion, Inc.*, 186 F.R.D. 331, 333 (M.D.N.C. 1999))). And here, the Cover Letter outlined the method and means by which the NCLCV Demonstrative Maps were produced (consistent with this Court’s December 20, 2021 Order), including several pages of detailed description of that method and means. That includes the mathematical processes that were employed to create those maps. The Cover Letter also detailed six categories of documents and code files that the NCLCV Defendants were producing, which provided further details on the method and means employed to create the maps. And it identified the non-testifying consulting experts who worked with Mr. Hirsch in anticipation of litigation on the computerized production of the NCLCV Demonstrative Maps. No public interest supports publicly identifying those non-testifying consulting experts. *See* G.R.P., Rule 27(b)(2)(a)-(b); *cf.* *Mack v. Moore*, 91 N.C. App. 478, 483, 372 S.E.2d 314, 317 (1988) (holding that the identity of non-testifying consulting experts is not discoverable).

Given the NCLCV Plaintiffs’ view that the Cover Letter contains confidential information, but that the information described in the body of the Legislative Defendants’ Motion for Clarification (and the NCLCV Plaintiffs’ Motion for Protective Order) is not confidential, the NCLCV Plaintiffs propose to proceed as follows:

(1) The NCLCV Plaintiffs will provide a public version of the Cover Letter that discloses the general information described in the body of the Legislative Defendants’ Motion for Clarification and the NCLCV Plaintiffs’ Motion for Protective Order but redacts the remainder.

(2) Because the full unredacted version of the Cover Letter will continue to contain confidential information, that document should remain under seal indefinitely, as no reasonable alternative exists to sealing the document. *See* G.R.P., Rule 27(b)(2)(c), (e).

(3) Pursuant to the designation of the Cover Letter as Confidential (but not Highly Confidential), the sealed and unredacted version may be accessible to the parties (not just counsel of record). *See* G.R.P., Rule 27(b)(2)(d).

Dated: December 29, 2021

Respectfully submitted,

JENNER & BLOCK LLP

Sam Hirsch*
Jessica Ring Amunson*
Kali Bracey*
Zachary C. Schauf*
Karthik P. Reddy*
Urja Mittal*
JENNER & BLOCK LLP
1099 New York Avenue NW, Suite 900
Washington, D.C. 20001
(202) 639-6000
shirsch@jenner.com
zschauf@jenner.com

David Bradford*
JENNER & BLOCK LLP
353 North Clark Street
Chicago, IL 60654
(312) 923-2975
dbradford@jenner.com

* *Admitted pro hac vice*

ROBINSON, BRADSHAW & HINSON, P.A.

/s/ Stephen D. Feldman

Stephen D. Feldman
North Carolina Bar No. 34940
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
(919) 239-2600
sfeldman@robinsonbradshaw.com

Adam K. Doerr
North Carolina Bar No. 37807
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
(704) 377-2536
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
North Carolina Bar No. 50247
ROBINSON, BRADSHAW & HINSON, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
(919) 328-8800
ezimmerman@robinsonbradshaw.com

Counsel for NCLCV Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon each of the parties to this action by electronic mail to counsel at the e-mail addresses indicated below, in accordance with North Carolina Rule of Civil Procedure 5(b)(1)(a):

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraig@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, DC 20002
lmadduri@elias.law
jshelly@elias.law
gwhite@elias.law

Abha Khanna
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
akhanna@elias.law

Elisabeth S. Theodore
R. Stanton Jones
John Cella
Samuel F. Callahan
ARNOLD AND PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
john.cella@arnoldporter.com
stanton.jones@arnoldporter.com
samuel.callahan@arnoldporter.com

Phillip J. Strach
Thomas A. Farr
Gregory P. McGuire
D. Martin Warf
John E. Branch III
Alyssa M. Riggins
Nathaniel J. Pencook
NELSON MULLINS RILEY & SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
phillip.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
greg.mcguire@nelsonmullins.com
martin.warf@nelsonmullins.com
john.branch@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
nate.pencook@nelsonmullins.com

Mark E. Braden
Katherine McKnight
Patrick T. Lewis
Sean Sandoloski
Richard Raile
BAKER HOSTETLER LLP
1050 Connecticut Avenue NW,
Suite 1100
Washington, DC 20036
mbraden@bakerlaw.com
kmcknight@bakerlaw.com
plewis@bakerlaw.com
ssandoloski@bakerlaw.com
rraile@bakerlaw.com

Counsel for Plaintiffs Representative Destin Hall, Senator Warren Daniel, Senator Ralph E. Hise, Jr., Senator Paul Newton, Representative Timothy K. Moore, and Senator Phillip E. Berger

*Counsel for Plaintiffs Rebecca Harper,
et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Jeffrey Loperfido
SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org
jeffloperfido@scsj.org

J. Tom Boer
Olivia T. Molodanof
HOGAN LOVELLS US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
oliviamolodanof@hoganlovells.com

Counsel for Plaintiff Common Cause

Terence Steed
Stephanie Brennan
Amar Majmundar
N.C. DEPARTMENT OF JUSTICE
Post Office Box 629
Raleigh, NC 27502-0629
tsteed@ncdoj.gov
sbrennan@ncdoj.gov
amajmundar@ncdoj.gov

*Counsel for Defendants the North Carolina
State Board of Elections, Damon Circosta,
Stella Anderson, Jeff Carmon III, Stacy Eggers
IV, Tommy Tucker, Karen Brinson Bell; and the
State of North Carolina*

This 29th day of December, 2021.

/s/ Stephen Feldman

Stephen Feldman

STATE OF NORTH CAROLINA

COUNTY OF WAKE

FILED

2021 DEC 29 P 4:20

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

21 CVS 015426

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, INC., et al.,

REBECCA HARPER, et al.,

COMMON CAUSE,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House Standing
Committee on Redistricting, et al.

Defendants.

WAKE CO., C.S.C.

**COMMON CAUSE AND HARPER
PLAINTIFFS' JOINT
MOTION TO STRIKE
SEAN P. TRENDE AFFIDAVIT**

Pursuant to North Carolina Rules of Civil Procedure 26(b)(4)(f) and 37, North Carolina General Statute, Section 8C-1, Rules 702, 703, and 705, *Common Cause* and *Harper* Plaintiffs jointly move to strike the affidavit submitted by Sean P. Trende on December 28, 2021 on behalf of Legislative Defendants, including its Exhibit A "rebuttal report", because it (1) does not contain any expert analysis; (2) is an improper rebuttal report because it does not contain any actual rebuttal evidence; and (3) is untimely pursuant to the Court's December 13, 2021 Case Scheduling Order to the extent it is considered an expert report.

ARGUMENT

A. The Trende Affidavit Contains No Actual Expert Analysis.

The affidavit submitted by Sean P. Trende (“Trende Affidavit”) does not qualify as an expert report under North Carolina’s rules because it does not contain Mr. Trende’s opinions or analysis, nor does it offer any specialized knowledge to assist the Court. Mr. Trende did nothing more than review the Complaints in this case, and create a colorful demonstrative purporting to show which districts were mentioned by each Plaintiff in their respective Complaints. Such a demonstrative could have been completed by counsel.

In Exhibit A, Mr. Trende states that he “created [] images” by “examin[ing] the Complaints filed by plaintiffs in this action” and “examined whether districts were challenged as either partisan gerrymanders or districts that diluted minority voting power.” Trende Aff., Ex. A ¶ 27. Based solely on the information contained in the Plaintiffs’ Complaints, Mr. Trende states that he then “color-coded the districts by plaintiff groups, based upon who challenged which districts.” Trende Aff., Ex. A ¶¶ 28, 29. This is the entirety of his “expert rebuttal report.” It does not contain any analysis or expertise; it is simply a color-coded summary of information purportedly contained in the Plaintiffs’ Complaints.¹

The “examination” performed by Mr. Trende is not an expert opinion, but only actually required reading the Plaintiffs’ Complaints. Simply put, this “examination” requires no opinion or expertise. Mr. Trende provides no opinion in Exhibit A, and the facts he purports to recount about which districts are mentioned by each Plaintiff are readily available by simply reading Plaintiffs’ Complaints. He does not offer any scientific, technical or other specialized knowledge that can assist the Court to understand the evidence or to determine a fact in issue. N.C. Gen. Stat.

¹ To be clear, this Motion does not concede that Mr. Trende’s summary is accurate.

§ 8C-1, Rule 702. There is, therefore, no colorable argument that the Trende Affidavit is an expert report, and should therefore be stricken.

B. The Trende Affidavit Contains No Rebuttal Evidence.

While Mr. Trende attests to submitting a “rebuttal report attached to this affidavit as Exhibit A,” the Exhibit contains no mention, let alone any rebuttal, of any evidence in any of Plaintiffs’ expert reports or any other evidence exchanged on December 23, 2021.

On December 23, 2021, pursuant to the Court’s December 13, 2021 Case Scheduling Order, Plaintiffs submitted to the parties and the court several expert witness reports including reports by Professor Daniel Magleby, Professor James Leloudis, Dr. Jonathan Mattingly, Dr. Jowei Chen, Dr. Christopher Cooper, Dr. Wesley Pegden, and Dr. Moon Duchin. North Carolina Rule of Civil Procedure 26(b)(4)(f)(2) allows rebuttal reports to be admitted if they are “intended solely to contradict or rebut evidence on the same subject matter identified by another party.” Legislative Defendants submitted the Trende Affidavit on December 28, 2021 as a “rebuttal report.” *See* Trende Aff. ¶ 3 (attesting that he has “personally prepared the rebuttal report attached to this affidavit as Exhibit A”). However, Exhibit A does not address or mention any of Plaintiffs’ experts’ opinions, much less attempt to rebut, contradict, or disprove any of Plaintiffs’ experts’ opinions. Rather, Exhibit A includes over five pages of “Expert Credentials” (Trende Aff., Ex. A ¶¶ 5-25) followed by less than a page of “Summary of Work Performed” (Trende Aff., Ex. A ¶¶ 26-29), which simply describes how Mr. Trende “color-coded” certain districts mentioned by Plaintiffs in their Complaints based entirely on information contained in Plaintiffs’ Complaints and disclosed well before December 23.

Nothing contained in the Trende Affidavit contradicts, rebuts, or even mentions Plaintiffs’ evidence or any opinions contained within the expert reports submitted by Plaintiffs on December

23, and nothing in the Affidavit relies on any information that was not fully available before December 23. The Trende Affidavit is, therefore, not a proper rebuttal report and should be stricken.

C. Mr. Trende’s Affidavit is Untimely.

Because the Trende Affidavit is not a rebuttal report, it needed to be disclosed by December 23, and it should be excluded as untimely (even assuming it qualifies as proper “expert” opinion). In the Court’s December 13, 2021 Case Scheduling Order, the Court clearly set forth the schedule for “the purpose of efficient management of these matters.” Order at 1. The Order set the “Deadline for parties’ exchange of evidence (in the form of expert witness reports, fact witness affidavits, and exhibit lists)” as December 23, 2021. Order at 5. All parties must abide by scheduling orders regarding expert disclosures. N.C. R. Civ. P. 26(b)(4)(f). Accordingly, the Defendants had until December 23 to submit expert witness reports. Instead, the Trende Affidavit was submitted on December 28, five days later.

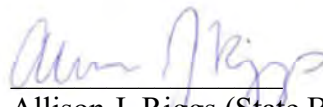
The Court should accordingly exclude the Trende Affidavit as untimely. Where a party “fails to provide timely disclosure under [Rule 26], the court may, upon motion, take such action as it deems just, including ordering that the party may not present at trial the expert witness for whom disclosure was not timely made.” N.C. R. Civ. P. 26(b)(4)(f)(2). Legislative Defendants never sought an extension of time to designate Mr. Trende as an expert and have not offered an explanation for the late designation. In such circumstances, the exclusion of the Trende Affidavit is proper. *See Briley v. Farabow*, 348 N.C. 537, 547-548, 501 S.E.2d 649, 655-656 (1998); *Myers v. Myers*, 269 N.C. App. 237, 255-256, 837 S.E.2d 443, 456 (2020) (court has inherent authority to exclude expert testimony due to untimely disclosure); *In re Pedestrian Walkway Failure*, 173

N.C. App. 254, 264–65, 618 S.E.2d 796, 803–04 (2005) (affirming trial court’s enforcement of court ordered deadlines and exclusion of expert due to late disclosures).

Given the truncated trial schedule, and the limited time that the parties have to conclude depositions and prepare for trial, each day matters. Legislative Defendants submitted the Trende Affidavit five days late, when many of the experts had already been scheduled for depositions, and offered no explanation for the untimely submission. Plaintiffs would suffer harm and prejudice if the untimely (and inaccurate) Trende Affidavit was permitted into the record and Mr. Trende were permitted to testify at trial as an untimely disclosed expert. It is therefore proper to strike the Trende Affidavit as untimely and to preclude Mr. Trende from testifying at trial.

Common Cause and *Harper* Plaintiffs respectfully request that, in light of (1) the absence of actual expert opinion or analysis in the Trende Affidavit, (2) the absence of *any* rebuttal evidence in the affidavit, which was filed as a “Rebuttal Report,” (3) and the fact that the affidavit was not timely disclosed as an affirmative expert report, the Court strike and exclude the Trende Affidavit and its Exhibits as improper and in violation of the Court’s December 13 Order and North Carolina’s rules for expert reports.

Respectfully submitted, this the 29th day of December, 2021.



Allison J. Riggs (State Bar No. 40028)

allison@southerncoalition.org

Hilary H. Klein (State Bar No. 53711)

hilaryhklein@scsj.org

Mitchell Brown (State Bar No. 56122)

Mitchellbrown@scsj.org

Katelin Kaiser (State Bar No. 56799)

Katelin@scsj.org

Jeffrey Loperfido (State Bar No. 52939)

jeffloperfido@scsj.org

SOUTHERN COALITION FOR SOCIAL JUSTICE

Burton Craig
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Lalitha D. Madduri*
Jacob D. Shelly *
Graham W. White
ELIAS LAW GROUP LLP
10 G. Street NE, Suite 600
Washington, D.C. 20002
MElias@elias.law
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

Abha Khanna*
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
AKhanna@elias.law

Elisabeth S. Theodore
R. Stanton Jones*
Samuel F. Callahan
ARNOLD AND PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue NW
Washington, DC 20001
elisabeth.theodore@arnoldporter.com

Counsel for Plaintiffs Rebecca Harper, et al.
* *Pro Hac Vice* Motion pending

1415 W. Highway 54, Suite 101
Durham, NC 27707
Telephone: 919-323-3909
Facsimile: 919-323-3942

J. Tom Boer* (D.C. Bar No. 469585;
CA Bar. No. 199563)
tom.boer@hoganlovells.com
Olivia T. Molodanof* (CA Bar No.
328554)
olivia.molodanof@hoganlovells.com
* Admitted *Pro Hac Vice*

HOGAN LOVELLS US LLP
3 Embarcadero Center, Suite 1500
San Francisco, California 94111
Telephone: 415-374-2300
Facsimile: 415-374-2499

Counsel for Plaintiff Common Cause

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day submitted a copy of the foregoing document in the above titled action by mail and/or electronic mail, in the manner requested, to the following parties:

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schuaf
Karthik P. Reddy
Urja Mittal
JENNER & BLOCK LLP
1099 New York Avenue, NW, Suite 900
Washington, D.C. 20001
shirsch@jenner.com
zschauf@jenner.com

Stephen D. Feldman
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27501
sfeldman@robinsonbradshaw.com

Adam K. Doerr
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
ROBINSON, BRADSHAW & HINSON, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for North Carolina League of
Conservation Voters, INC., et al. Plaintiffs*

Terence Steed
Special Deputy Attorney General
Stephanie A. Brennan
Special Deputy Attorney General
Amar Majmundar
Senior Deputy Attorney General
NC DEPARTMENT OF JUSTICE
P.O. Box 629
Raleigh, NC 27602
tsteed@ncdoj.gov
sbrennan@ncdoj.gov
amajmundar@ncdoj.gov

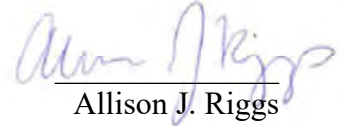
Counsel for the State Defendants

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
NELSON MULLINS RILEY & SCARBOROUGH
LLP
4140 Parklake Avenue, Suite 200
Raleigh, North Carolina 27612
phillip.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
alyssa.riggins@nelsonmullins.com

Mark E. Braden
Katherine McKnight
Richard Raile
BAKER HOSTETLER LLP
1050 Connecticut Ave NW
Suite 1100
Washington, DC 20036
mBraden@bakerlaw.com
kmcknight@bakerlaw.com
rraile@bakerlaw.com

Counsel for Legislative Defendants

This the 29th day of December, 2021.



Allison J. Riggs
Southern Coalition for Social Justice

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 015426

NORTH CAROLINA LEAGUE, OF
CONSERVATION VOTERS, INC., *et al.*,
Plaintiffs

and

COMMON CAUSE,
Plaintiff-Intervenor,

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, *et*
al.,
Defendants.

FILED
2021 DEC 29 PM 2:23
WAKE CO., C.S.C.
BY _____

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 500085

REBECCA HARPER, *et al.*,
Plaintiffs

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, *et*
al.,
Defendants.

ORDER ON HARPER PLAINTIFFS' MOTION TO COMPEL ADEQUATE
RESPONSES TO SECOND SET OF INTERROGATORIES AND FIRST SET OF
REQUESTS FOR PRODUCTION

THIS MATTER came before the undersigned three-judge panel upon Harper Plaintiffs' Motion to Compel submitted to the Court¹ on December 28, 2021, pursuant to Rule 37 of the North Carolina Rules of Civil Procedure.

Procedural and Factual Background

In this litigation, Plaintiffs seek a declaration that the North Carolina Congressional, North Carolina Senate, and North Carolina House of Representatives districts established by an act of the General Assembly in 2021, N.C. Sess. Laws 2021-174 (Senate Bill 750), 2021-173 (Senate Bill 739), and 2021-175 (House Bill 976) (collectively the "Enacted Plans"), violate the rights of Plaintiffs under the North Carolina Constitution. Plaintiffs seek to enjoin the future use of the 2021 congressional and state legislative districts.

On December 13, 2021, after receiving an order from the Supreme Court of North Carolina directing this Court to resolve all Plaintiffs' claims on the merits by January 11, 2022, this Court entered a Case Scheduling Order giving the parties until December 31, 2021, to complete discovery in advance of trial, which is set to commence on January 3, 2022.

On December 20, 2021, this Court entered an order clarifying that NCLCV Plaintiffs would be required to identify any and all persons who took part in drawing or participated in the computerized production of NCLCV Plaintiffs' Optimized Maps, that NCLCV Plaintiffs were to produce to Legislative Defendants the method and means by which the Optimized Maps were formulated and produced, including, but not limited to all source code, source data, input parameters, and all outputted data associated with the Optimized Maps, and that NCLCV Plaintiffs were to identify any and all persons who took part in drawing or participated in the computerized production of the Optimized Maps. On December 21, 2021, Harper Plaintiffs requested this same information from Legislative Defendants through

¹ The Hon. A. Graham Shirley has accepted Plaintiffs Motion for filing on the 27th day of December, 2021, pursuant to Rule 5(e) of the North Carolina Rules of Civil Procedure.

interrogatories and requests for production of documents issued, respectively, pursuant to Rules 33 and 34 of the North Carolina Rules of Civil Procedure. Harper Plaintiffs specifically requested this information and documentation as it pertains to the Enacted Plans, including the identification of all persons who took part in the drawing of the Enacted Plans in any way as well as all documents or data relied upon by those involved in the map drawing process.

On December 24, 2021, this Court entered a Protective Order acknowledging assertions of legislative privilege by four of the named Legislative Defendants—President *Pro Tempore* Philip E. Berger, Senator Warren Daniel, Senator Paul Newton, and Speaker Timothy K. Moore—and ordering that those four legislators not be called to testify at depositions noticed by Harper Plaintiffs. In that same Order, this Court noted that nothing in the Order should be construed as a limitation on the ability of Representative Hall or Senator Hise to waive their personal legislative privilege and testify at deposition or at trial. Representative Hall's deposition occurred on December 27, 2021, and Senator Hise's deposition occurred on December 28, 2021.

On December 27, 2021, Harper Plaintiffs filed their First Motion to Compel, and on that same date the Court entered an Order granting the Motion to Compel, ordering Legislative Defendants to respond to Harper Plaintiffs' second set of interrogatories and first set of requests for production by 9:00 AM EST on December 28, 2021. As this Court noted in its Order, the sought-after information and documentation pertaining to the Enacted Plans, including the identification of all persons who took part in the drawing of the Enacted Plans in any way *as well as all documents or data relied upon by those involved in the map drawing process*, goes to the heart of the dispute in this redistricting litigation.

On December 28, 2021, Harper Plaintiffs filed the present Motion to Compel, contending that, in light of testimony given by Representative Hall, Legislative Defendants' responses served in response to this Court's December 27, 2021, Order, are facially deficient

and are impeding access to key information that goes “to the heart of the dispute in this redistricting litigation.” Legislative Defendants thereafter submitted a written response to the Motion on December 29, 2021.

Harper Plaintiffs and Legislative Defendants have informed the Court of their respective positions on the Motion, and the matter is now ripe for resolution by the Court.

Harper Plaintiffs’ Motion to Compel

After considering the Motion and the responses to that motion, as well as the matters contained therein, the Court, in its discretion, rules upon Harper Plaintiffs’ Motion as follows:

“Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party.” N.C.G.S. § 1A-1, Rule 26(b)(1). “The test for relevance for discovery purposes only requires that information be ‘reasonably’ calculated to lead to the discovery of admissible evidence.” *Lowd v. Reynolds*, 205 N.C. App. 208, 214, 695 S.E.2d 479, 483 (2010) (quoting N.C.G.S. § 1A-1, Rule 26(b)(1)). “[O]rders regarding discovery are within the discretion of the trial court.” *Dworsky v. Travelers Ins. Co.*, 49 N.C. App. 446, 448, 271 S.E.2d 522, 523 (1980).

Rule 34(a) of the North Carolina Rules of Civil Procedure expressly authorizes requests for matters “in the possession, custody or control of the party upon whom the request is served,” N.C.G.S. § 1A-1, Rule 34(a). Such documents and data “are deemed to be within the possession, custody or control of a party for purposes of Rule 34 if the party has actual possession, custody or control of the materials or has the legal right to obtain the documents on demand.” *Lowd*, 205 N.C. App. at 214 (quoting *Pugh v. Pugh*, 113 N.C.App. 375, 380–81, 438 S.E.2d 214, 218 (1994)).

Legislative Defendants’ position that they have fully responded to the discovery requests at issue largely rests upon the contention that they simply do not have possession

of any concept maps, documents, or other data that were utilized by Representative Hall, or others, during the map-drawing process—despite Representative Hall testifying that he frequently consulted in private with others during the map-drawing process, that he reviewed a number of concept maps during those discussions, and that he utilized maps previously prepared by those individuals for his own use when publicly drawing a number of the districts challenged in this litigation. Harper Plaintiffs in particular point to the role of legislative employee Dylan Reel—who served as Representative Hall's general counsel for only a brief period of time during the redistricting process. Legislative Defendants contend that it is Mr. Reel who maintained possession of the concept maps and other data at issue in Harper Plaintiffs' present Motion, and therefore there is simply nothing more they can do to locate and produce the requested information, documents, and data.

The Court finds unpersuasive Legislative Defendants' contention that they do not have a duty to disclose the requested information, documents, and data—particularly as to any related to the “concept maps” reviewed and considered by Representative Hall—because it is not in their possession, custody, or control.

Notably in this redistricting litigation, “documents prepared by legislative employees for legislators concerning redistricting the North Carolina General Assembly or the Congressional Districts are no longer confidential and become public records upon the act establishing the relevant district plan becoming law. Present and former legislative employees may be required to disclose information otherwise protected by N.C.G.S. § 120-132 concerning redistricting the North Carolina General Assembly or the Congressional Districts upon the act establishing the relevant district plan becoming law.” N.C.G.S. § 120-133(a). As noted in this statute, even when information gleaned from the legislative process may be subject to protection, legislative employees can be compelled by court order to disclose information he or she acquired while serving as a legislative employee, subject to legislative

privilege and N.C.G.S. § 120-133, and provided that the presiding judge determines disclosure is necessary to a proper administration of justice. N.C.G.S. § 120-132.

The Court finds and concludes that although Mr. Dylan Reel is no longer an employee of Representative Hall, he is plainly a legislative employee, N.C.G.S. § 120-129(2), and the documents provided by Mr. Reel for Representative Hall were no longer confidential and become public records as of November 4, 2021, when S.L. 2021-175 (House Bill 976) was enacted, N.C.G.S. § 120-133(a).

Furthermore, even though the requested information, documents, and data may not be currently within the individual Legislative Defendants' actual possession, the information, documents, and data are sufficiently within, at the very least, Representative Hall's control and custody such that he can request and obtain the information, documents, and data from his former staffer on demand.

Finally, the Court finds that disclosure of the sought-after pre-enactment communications, information, documents, and data is necessary to the proper administration of justice, subject to *bona fide* assertions of attorney-client privilege or work product doctrine. See N.C.G.S. § 120-133(b); *Dickson v. Rucho*, 366 N.C. 332, 737 S.E.2d 362 (2013).

Conclusion

WHEREFORE, the Court, for the reasons stated herein and in the exercise of its discretion, hereby **ORDERS** the following:

1. Harper Plaintiffs' Second Motion to Compel is **GRANTED** and Legislative Defendants shall fully respond to Harper Plaintiffs' interrogatories and requests for production at issue in the present Motion by 9:00 AM EST on December 30, 2021. Simply citing to the public record is insufficient.
2. Information, documents, and data not within the physical possession of Legislative Defendants shall be obtained by Legislative Defendants from legislative employees participating in the private discussions that guided the map-drawing process, including but not limited to Representative Hall's former legislative employee, Mr. Dylan Reel.

3. If the concept maps or any related information identified in Legislative Defendants' response to Interrogatory No. 2 have been lost or destroyed, Legislative Defendants shall identify the lost or destroyed material with specificity and certify to that loss or destruction.

SO ORDERED, this the 29 day of December, 2021.



A. Graham Shirley, Superior Court Judge

/s/ Nathaniel J. Poovey

Nathaniel J. Poovey, Superior Court Judge

/s/ Dawn M. Layton

Dawn M. Layton, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission addressed as follows:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Harper Plaintiffs

Stephen D. Feldman
Adam K. Doerr
Erik R. Zimmerman
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
adoerr@robinsonbradshaw.com
ezimmerman@robinsonbradshaw.com
Counsel for NCLCV Plaintiffs


Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Jeffrey Loperfido
SOUTHERN COALITION FOR
SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org
jeffloperfido@scsj.org
Counsel for Common Cause Plaintiff-Intervenor

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
NELSON MULLINS RILEY &
SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Phillip.strach@nelsonmullins.com
Tom.farr@nelsonmullins.com
Alyssa.riggins@nelsonmullins.com
Counsel for Legislative Defendants

Terence Steed
Amar Majmundar
Stephanie A. Brennan
NORTH CAROLINA DEPARTMENT
OF JUSTICE
Post Office Box 629
Raleigh, NC 27602
tsteed@ncdoj.gov
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
Counsel for State Board Defendants

Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 25th day of December 2021.

/s/ Kellie Z. Myers 
Kellie Z. Myers
Trial Court Administrator
10th Judicial District
Kellie.Z.Myers@nccourts.org

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 015426

NORTH CAROLINA LEAGUE, OF
CONSERVATION VOTERS, INC., *et al.*,
Plaintiffs

and

COMMON CAUSE,
Plaintiff-Intervenor,

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, *et*
al.,
Defendants.

FILED
2021 DEC 30 PM 2:37
WAKE CO., C.S.C.
BY _____

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CVS 500085

REBECCA HARPER, *et al.*,
Plaintiffs

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, *et*
al.,
Defendants.

**ORDER ON (1) NCLCV PLAINTIFFS' MOTION FOR PROTECTIVE ORDER,
(2) LEGISLATIVE DEFENDANTS' MOTION FOR CLARIFICATION, AND (3)
LEGISLATIVE DEFENDANTS' MOTION TO SEAL**

THESE MATTERS came before the undersigned three-judge panel upon 1) NCLCV Plaintiffs' Motion for Protective Order, filed December 29, 2021, pursuant to Rule 26(c) of the North Carolina Rules of Civil Procedure; 2) Legislative Defendants' Motion for Clarification, and in the alternative, Motion to Compel, submitted provisionally under seal on December

29, 2021, pursuant to Rules 26, 30, and 37 of the Rules of Civil Procedure; and, 3) Legislative Defendants' Motion to Seal their Motion for Clarification, and in the alternative, Motion to Compel submitted contemporaneously with the Motion on December 29, 2021, pursuant to Rule 27 of the General Rules of Practice for the Superior and District Courts.

Procedural and Factual Background

In this litigation, Plaintiffs seek a declaration that the North Carolina Congressional, North Carolina Senate, and North Carolina House of Representatives districts established by an act of the General Assembly in 2021, N.C. Sess. Laws 2021-174 (Senate Bill 750), 2021-173 (Senate Bill 739), and 2021-175 (House Bill 976) (collectively the "Enacted Plans"), violate the rights of Plaintiffs under the North Carolina Constitution. Plaintiffs seek to enjoin the future use of the 2021 congressional and state legislative districts.

On December 13, 2021, after receiving an order from the Supreme Court of North Carolina directing this Court to resolve all Plaintiffs' claims on the merits by January 11, 2022, this Court entered a Case Scheduling Order giving the parties until December 31, 2021, to complete discovery in advance of trial, which is set to commence on January 3, 2022. The parties were further ordered that expert reports produced to opposing parties "shall be accompanied by all source code, source data, input parameters, and all outputted data." On December 14, 2021, Legislative Defendants filed a Motion to Compel seeking this very information for the expert reports produced by Plaintiffs during the preliminary-injunction phase of this litigation.

Legislative Defendants' motion was granted in part by the Court on December 15, 2021¹; however, NCLCV Plaintiffs were not required under that order to produce any documents or information that their expert Professor Moon Duchin did not consider or

¹ On December 15, 2021, the Court contemporaneously entered a Protective Order governing the exchange of confidential and highly confidential materials in these consolidated cases.

receive. On December 20, 2021, this Court entered an order clarifying that NCLCV Plaintiffs were to produce to Legislative Defendants the method and means by which the Optimized Maps were formulated and produced, including, but not limited to all source code, source data, input parameters, and all outputted data associated with the Optimized Maps, and that NCLCV Plaintiffs were to identify any and all persons who took part in drawing or participated in the computerized production of the Optimized Maps. This production was ordered to occur by the December 23, 2021, deadline in the Case Scheduling Order for initial expert reports.

After the production of this material, Legislative Defendants thereafter noticed the deposition of Sam Hirsch, an attorney in Jenner & Block LLP's Washington D.C. office and admitted *pro hac vice* by this Court as counsel of record for NCLCV Plaintiffs, on December 27, 2021. The notice of deposition states that Mr. Hirsch's deposition is scheduled to occur on December 31, 2021. Legislative Defendants likewise included Mr. Hirsch in their list of witnesses they may call to testify at trial, and this list was provided to NCLCV Plaintiffs on December 27, 2021.

On December 29, 2021, NCLCV Plaintiffs filed the present Motion for a Protective Order, seeking to quash the notice of deposition directed to Sam Hirsch and direct Legislative Defendants to strike Sam Hirsch from their witness list for trial. Legislative Defendants submitted a written response to this motion on December 29, 2021.

Also on December 29, 2021, Legislative Defendants submitted provisionally under seal the present Motion for Clarification, or in the alternative, Motion to Compel, seeking an order clarifying whether this Court's order granting *pro hac vice* status to Sam Hirsch allows Legislative Defendants to obtain deposition and trial testimony of him without a subpoena, contending that Mr. Hirsch is now a fact witness in this matter. In the alternative, Legislative Defendants seek an order compelling Mr. Hirsch to testify at the noticed

deposition and at trial. Legislative Defendants also filed a Motion to Seal the Motion for Clarification due to NCLCV Plaintiffs designating the entirety of their documents produced in response to this Court's December 20, 2021, Order as Confidential per the Court's December 15, 2021, Protective Order. NCLCV Plaintiffs submitted a written response to these motions on December 29, 2021.

The parties have fully briefed their respective positions on the Motions, and the matters are now ripe for resolution by the Court.

NCLCV Plaintiffs' Motion for Protective Order and Legislative Defendants' Motion for Clarification, and in the alternative, Motion to Compel

After considering NCLCV Plaintiffs' motion and Legislative Defendants' motion, the parties' respective responses to the motions, and the matters contained therein, and having reviewed the record proper, the Court, in its discretion, rules upon the motions as follows:

Testimony Regarding the Optimized Maps is Relevant to the Issues in this Redistricting Litigation and Compelling the Testimony of Mr. Hirsch Satisfies the Shelton Test

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party." N.C.G.S. § 1A-1, Rule 26(b)(1). "The test for relevance for discovery purposes only requires that information be 'reasonably' calculated to lead to the discovery of admissible evidence." *Lowd v. Reynolds*, 205 N.C. App. 208, 214, 695 S.E.2d 479, 483 (2010) (quoting N.C.G.S. § 1A-1, Rule 26(b)(1)). "[O]rders regarding discovery are within the discretion of the trial court." *Dworsky v. Travelers Ins. Co.*, 49 N.C. App. 446, 448, 271 S.E.2d 522, 523 (1980). One method of obtaining discovery is through depositions upon oral examination, which are governed by Rule 30 of the North Carolina Rules of Civil Procedure. Rule 30 provides that "[a]fter commencement of the action, any party may take the testimony of *any person*, including a party, by deposition upon oral examination." N.C.G.S. § 1A-1, Rule 30(a) (emphasis added). Furthermore, the

Rule provides that “[t]he attendance of witnesses *may* be compelled by subpoena as provided in Rule 45[.]” *Id.* (emphasis added).

Trial courts have authority over the proceedings before it, as well as the counsel in those proceedings. Indeed, the power of the court to deal with its attorneys “is an inherent one because it is an essential one for the court to possess in order for it to protect itself from fraud and impropriety and to serve the ends of the administration of justice which are, fundamentally, the *raison d’etre* for the existence and operation of the courts.” *Law Offices of Peter H. Priest, PLLC v. Coch*, 2014 NCBC 54, *36 (quoting *Swenson v. Thibaut*, 39 N.C. App. 77, 109, 250 S.E.2d 279, 299 (1978)).

“The seminal case on the issue of deposing litigation counsel is *Shelton v. American Motors Corp.*, 805 F.2d 1323 (8th Cir. 1986), which limited the deposition of opposing counsel to circumstances ‘where the party seeking to take the deposition has shown that (1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged [sic]; and (3) the information is crucial to the preparation of the case. Courts throughout the country, including North Carolina’s federal courts, have adopted the *Shelton* test.” *Blue Ridge Pediatric & Adolescent Med., Inc. v. First Colony Healthcare, LLC*, 2012 NCBC 45, 58 (N.C. Super. Ct. Aug 9, 2012) (internal citation omitted).

As did the trial court in *Blue Ridge Pediatric & Adolescent Med.*, this Court agrees that “[w]hile not binding on this Court, *Shelton* and its progeny offer guidance to the Court in deciding this motion. This Court concludes that the *Shelton* test is appropriate in this case because the test closely parallels the language of Rule 26, which allows a party to limit discovery by convincing a court that information sought in discovery by deposition, upon oral examination, is (1) not ‘obtainable from some other [less burdensome] source . . . ,’ (2) ‘not

privileged . . . ,’ and (3) ‘importan[t to] the issues at stake in the litigation.’” *Id.* at 61 (citing N.C. R. Civ. P. 26(b)(1)) (alterations in original).

Here, NCLCV Plaintiffs are correct that the ordinary manner by which a party can compel a witness’s attendance at a deposition is to issue a subpoena to that witness; however, in the extraordinary circumstances governing the timing constraints of this case to come to a full resolution of all claims by January 11, 2022, compelling Mr. Hirsch to sit for deposition—as noticed, despite the absence of a subpoena—serves the needs of this important litigation and the ends of the administration of justice in a case in which he has made an appearance. Indeed, the only means that exist to obtain the information is to depose Mr. Hirsch, the information sought is relevant and nonprivileged, and the information is crucial to the preparation of the case. Evidence before the Court demonstrates that NCLCV Plaintiffs, in complying with the Court’s December 20, 2021, Order, identified Mr. Hirsch as a person who plainly and meaningfully took part in the drawing and computerized production of the Optimized Maps. *See* Leg. Def. Mot. to Clarify, Exhibit A. Mr. Hirsch’s involvement, the Court observes, occurred prior to the initiation of NCLCV Plaintiffs’ legal action filed against the Legislative Defendants challenging the state legislative and congressional redistricting plans at issue—and the other persons involved are not expected to be called as witnesses in this case. *Id.* Accordingly, the information sought through Mr. Hirsch’s deposition is relevant and can only be obtained through him. The Court, however, acknowledges that because attorney-client privilege may protect some of the information to which Mr. Hirsch will be called to testify, nothing in this Order shall be construed as a limitation on NCLCV Plaintiffs’ or Mr. Hirsch’s ability to assert *bona fide* attorney-client privilege and work product doctrine assertions at his deposition.

Furthermore, as the Court explained in its Order on Legislative Defendants’ Motion for Partial Reconsideration, the underlying data and persons involved in the creation of the

Optimized Maps are indeed relevant and discoverable for the following reasons: the Optimized Maps were presented, and referenced over ninety (90) times, to the Court in NCLCV Plaintiffs' Complaint; at the hearing on the Motion for Preliminary Injunction the NCLCV Plaintiffs mentioned the Optimized Maps on numerous occasions and provided the Court with copies of the same; and, NCLCV Plaintiffs, in both their Complaint and at the hearing on the Motion for Preliminary Injunction, requested that in the event Legislative Defendants are required to draw remedial maps and fail to do so to the satisfaction of the Court, that the Court require the use of the Optimized Maps for the 2022 Elections. Simply put, NCLCV Plaintiffs have put the issue of the Optimized Maps before the Court, and this includes the testimony of a person who directed the creation of the Optimized Maps. Accordingly, this Court will deny NCLCV Plaintiffs' Motion for a Protective Order and grant Legislative Defendants' Motion seeking to compel Mr. Hirsch's appearance at the noticed deposition and, if called, at trial.

Mr. Hirsch Carries the Responsibility for Complying with the Ethical Rules Governing When an Attorney May Be Called Upon as Both an Advocate and Necessary Witness at Trial

As an additional matter, when seeking to be admitted *pro hac vice*, an attorney must certify "that with reference to all matters incident to the proceeding, the attorney agrees to be subject to the orders and . . . the civil jurisdiction of the General Court of Justice." N.C.G.S. § 84-4.1(3).

It is incumbent upon attorneys admitted *pro hac vice* to comply with our state's rules of professional conduct. At issue here, Rule 3.7 of the North Carolina Rules of Professional Conduct provides that "[a] lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless: (1) the testimony relates to an uncontested issue; (2) the testimony relates to the nature and value of legal services rendered in the case; or (3) disqualification of the lawyer would work substantial hardship on the client." N.C. Rules of

Prof'l Conduct R. 3.7(a). In a Formal Ethics Opinion issued by the N.C. State Bar on April 22, 2011, entitled “Lawyer as Advocate and Witness,” the State Bar explained that this Rule requires the attorney to evaluate whether he or she may become a necessary witness in a case. 2011 Formal Ethics Opinion 1 (“A lawyer who is named as a witness by an opposing party must evaluate his knowledge of the facts in controversy and make a good faith determination as to whether his testimony will be relevant, material, and unobtainable elsewhere. This evaluation must be ongoing as the case moves toward trial, contested issues are identified, and discovery discloses additional witnesses and information about the case. However, to avoid prejudicing a client due to a last-minute change of trial counsel, a lawyer should withdraw from representation in the trial if the lawyer knows or reasonably should know that he is a necessary witness.”). The Formal Ethics Opinion also clarified that the “underlying reason for the prohibition—confusion of the trier of fact relative to the lawyer’s role—does not apply when the lawyer’s advocacy is limited to activities outside the courtroom. Although a lawyer may continue to provide representation outside the courtroom, the lawyer should not use this as an excuse to delay withdrawal from representation in the litigation if the lawyer knows or reasonably should know that he is a necessary witness.” *Id.* (internal citations omitted).

Although Mr. Hirsch’s representation of NCLCV Plaintiffs outside of the courtroom does not implicate Rule 3.7, NCLCV Plaintiffs have indicated that Mr. Hirsch is set to examine certain witnesses at the trial of these consolidated cases. As such, it is incumbent upon Mr. Hirsch to determine whether he is a necessary witness such that he would need to withdraw as counsel at the trial of this matter.

Legislative Defendants’ Motion to Seal

As the Court reminded the parties in the December 13, 2021, Case Scheduling Order, if a party intends to submit any materials under seal, they are to comply with Rule 27 of the

General Rules of Practice. Rule 27 of the General Rules of Practice governs the process for when a party submits a document under seal, and further provides that the court “may rule on the motion with or without a hearing. In the absence of a motion or brief that justifies sealing the document, the court may order that the document (or part of the document) be made public.” N.C. R. Super. & Dist. Cts. 27(b)(6).

NCLCV Plaintiffs have designated as Confidential the document included with Legislative Defendants’ Motion to Clarify as Exhibit A. In their written response to the Motion to Seal, NCLCV Plaintiffs state that they agree that the Motion for Clarification may enter the public record, including its discussion of Mr. Hirsch related to the Optimized Maps, but maintain that the Cover Letter attached to that motion is confidential and should be sealed. NCLCV Plaintiffs have proposed to provide a public version of the document disclosing general information described in Legislative Defendants’ Motion while redacting other, specific portions and maintaining the full unredacted version under seal indefinitely.

The Court disagrees with Legislative Defendants that the document marked as Exhibit A to Legislative Defendants’ Motion to Clarify was not properly designated as Confidential by NCLCV Plaintiffs at the time of disclosure. The Court also appreciates that NCLCV Plaintiffs have proposed a reasonable alternative to balance public access to the record in this case with the need for certain information, if properly designated, to remain confidential. The Court, however, finds that the nature of the information disclosed—for the reasons explained above—and the compelling public interest in the nature of this litigation requires that Exhibit A be made a part of the public record in full. Accordingly, this Court will order that Legislative Defendants’ Motion to Seal be Denied and that the Motion and attached Exhibit A be filed as part of the public record.

Conclusion

WHEREFORE, the Court, for the reasons stated herein and in the exercise of its discretion, hereby ORDERS the following:

1. NCLCV Plaintiffs' Motion for a Protective Order is DENIED.
2. Legislative Defendants' Motion to Clarify is GRANTED and Mr. Sam Hirsch is hereby commanded to appear at the duly noticed deposition on December 31, 2021, or at another time and place agreed upon by the parties, and, if called, testify at trial set to commence January 3, 2022.
3. Legislative Defendants' Motion to Seal is DENIED and the Motion and attached Exhibit A shall be filed as part of the public record.

SO ORDERED, this the 30 day of December, 2021.



A. Graham Shirley, Superior Court Judge

/s/ Nathaniel J. Poovey

Nathaniel J. Poovey, Superior Court Judge

/s/ Dawn M. Layton

Dawn M. Layton, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission addressed as follows:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Harper Plaintiffs

Stephen D. Feldman
Adam K. Doerr
Erik R. Zimmerman
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
adoerr@robinsonbradshaw.com
ezimmerman@robinsonbradshaw.com
Counsel for NCLCV Plaintiffs

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Jeffrey Loperfido
SOUTHERN COALITION FOR
SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org
jeffloperfido@scsj.org
Counsel for Common Cause Plaintiff-Intervenor

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
John E. Branch, III
NELSON MULLINS RILEY &
SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Phillip.strach@nelsonmullins.com
Tom.farr@nelsonmullins.com
Alyssa.riggins@nelsonmullins.com
John.Branch@nelsonmullins.com
Counsel for Legislative Defendants

Terence Steed
Amar Majmundar
Stephanie A. Brennan
NORTH CAROLINA DEPARTMENT
OF JUSTICE
Post Office Box 629
Raleigh, NC 27602
tsteed@ncdoj.gov
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
Counsel for State Board Defendants

Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 30th day of December 2021.

/s/ Kellie Z. Myers
Kellie Z. Myers
Trial Court Administrator
10th Judicial District
Kellie.Z.Myers@nccourts.org

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

REBECCA HARPER, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

Consolidated with
21 CVS 500085

**LEGISLATIVE DEFENDANTS’ RESPONSE IN OPPOSITION TO PLAINTIFFS’
JOINT MOTION TO STRIKE SEAN P. TRENDE AFFIDAVIT**

NOW COME President *Pro Tempore* Philip E. Berger, Senator Warren Daniel, Senator Ralph E. Hise, Senator Paul Newton, Speaker Timothy K. Moore, and Representative Destin Hall (collectively, “Legislative Defendants”), by and through undersigned counsel, and hereby respond in opposition to *Common Cause* and *Harper* Plaintiffs’ Joint Motion to Strike Sean P. Trende Affidavit (“Plaintiffs’ Joint Motion”) as follows:

BACKGROUND

Sean P. Trende is a Senior Elections Analyst with RealClearPolitics and a doctoral candidate in political science at The Ohio State University, who expects to receive his Ph.D in May 2022. Trende has completed his coursework and has passed comprehensive examinations, with coursework including, *inter alia*, classes on G.I.S. systems, spatial statistics, issues in contemporary redistricting, machine learning, non-parametric hypothesis tests, and probability.

Trende is an expert in drawing and analyzing districting maps as evidenced by his recent assignment as special master assigned to draw district maps in Virginia. A full description of Trende’s credentials may be found in his 2 December 2021 Affidavit at the preliminary injunction stage in this now-consolidated matter and in his Affidavit and Rebuttal Report in the merits phase, timely served on Plaintiffs on 28 December 2021.

On 13 December 2021, this Court entered a Scheduling Order providing the following deadlines for expedited discovery in this matter:

Date	Action
12/23/2021	Deadline for parties’ exchange of evidence (in the form of expert witness reports, fact witness affidavits, and exhibit lists).
12/27/2021	Deadline for parties’ exchange of witness lists.
12/28/2021	Deadline for parties’ exchange of rebuttal evidence, including rebuttal expert reports.

Scheduling Order p 5.

Notably, the “12/23/2021” deadline does not include exchange of expert identities or witness lists. On 27 December 2021, Legislative Defendants listed Trende as a witness on their timely exchanged witness list. On the morning of 28 December 2021, counsel for Legislative Defendants conferenced with counsel for Plaintiffs, offering depositions of Trende (and Dr. Lewis) in light of the witness list and forecasted the production of the Trende Affidavit. Trende’s proposed time for deposition was Thursday 30 December 2021. Trende’s deposition has not been noticed.

ARGUMENT

The affidavit submitted by Sean P. Trende (“Trende Affidavit”) in the merits phase of this litigation is an appropriate, timely rebuttal report containing expert analysis that should not be

stricken at this preliminary stage as Plaintiffs will not be prejudiced or suffer harm by the Trende Affidavit. A true and correct copy of the Trende Affidavit is attached hereto as **Exhibit 1**.

A. The Trende Affidavit contains expert analysis and proper rebuttal evidence.

The Trende Affidavit was produced through Trende’s specialized knowledge and will help this court determine key facts at issue. As set forth in the Trende Affidavit, a lay person without the appropriate mapping software could not produce the maps included in Exhibit A(2) of Trende’s rebuttal. Specifically, Trende used “R, a widely utilized statistical programming tool” to upload shapefiles of the enacted 2021 legislative and congressional maps and color code them. Trende Aff., Ex. A ¶ 29. A person without the specialized knowledge of such a statistical programming tool would not know how to recreate the maps—producing Exhibit A(2) requires specialized knowledge.¹

Further, the color-coded maps in Exhibit A(2) rebut Plaintiffs’ experts analyses by highlighting districts that remain unchallenged by any Plaintiff, but that are nonetheless analyzed by certain experts. For example, Trende’s rebuttal maps illustrate the irrelevancy of portions of Dr. Cooper’s analysis of House District 66, as that district was not challenged by any Plaintiff as a political gerrymander. *Compare* Christopher A. Cooper Expert Report, p. 70-72 (“The partisan effects of small decisions are particularly apparent in the spike that juts up from HD-66 into HD-35, keeping the Democratic VTDs in that spike fenced off from the more Republican-leaning

¹ In *Common Cause v. Lewis*, No. 18-cvs-014001 (N.C. Super. Ct. 2019), the court excluded a similar portion of a lay person’s affidavit because he was using “GIS maps” to show VTD splits and that “inherent in the creation of such maps is the application of specialized knowledge that moves beyond a mere report of the facts observed through the senses because it necessarily requires assessing and transmuting technical data. Moreover, expert assistance would be required to properly interpret the maps.” A true and correct copy of the applicable *Common Cause* order is attached hereto as **Exhibit 2**.

VTDs in HD-35.”) *with* Trende Aff., Ex. A(2), p 5. Accordingly, the Trende Affidavit contains proper expert rebuttal material.

B. The Trende Affidavit was timely exchanged.

This Court’s 13 December 2021 Scheduling Order requires the following be completed by 23 December 2021: “Deadline for parties’ exchange of evidence (in the form of expert witness reports, fact witness affidavits, and exhibit lists).” Scheduling Order p 5. The plain language of the Scheduling Order does not require disclosure of identities of all experts or witnesses on that date. Instead, witness lists were timely exchanged under the Scheduling Order on 27 December 2021. Trende was on Legislative Defendants’ witness list. Additionally, the Trende Affidavit, and the rebuttal report contained therein as Exhibit A, was timely exchanged under the Scheduling Order on 28 December 2021. *See* N.C. R. Civ. P. 26(b)(4)(f) (setting default rules of procedure unless otherwise “set by scheduling order”).

C. Plaintiffs will not be prejudiced and their Joint Motion is premature.

Plaintiffs have had ample notice, under these time-constrained conditions, of Trende’s involvement in this case and will not be prejudiced by the inclusion of Trende’s short rebuttal report. Trende first submitted an affidavit in the preliminary injunction stage of this litigation on 2 December 2021. Trende was subsequently listed Legislative Defendants’ 27 December 2021 preliminary witness list. On Tuesday morning, Legislative Defendants offered Plaintiffs the opportunity to depose Trende on Thursday morning—an opportunity Plaintiffs ignored. Trende was available for deposition and will be open to cross-examination at trial should he be called by Legislative Defendants as a witness.

Further, Plaintiffs’ Joint Motion is premature. The Trende Affidavit has not yet been proffered as an exhibit, and thus evidentiary objections under Rules 702, 703, and 705 of the North

Carolina Rules of Evidence are improper. Nonetheless, as previously explained *supra* Part A, Trende’s rebuttal maps required specialized knowledge of statistical programming to create and thus could not have been completed by counsel or other lay persons.

CONCLUSION

WHEREFORE, for the reason set forth above, Legislative Defendants respectfully request this court deny Plaintiffs’ Joint Motion to Strike in its entirety.

Respectfully submitted, this the 30th day of December, 2021.

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com
Thomas A. Farr (NC Bar No. 10871)
tom.farr@nelsonmullins.com
Alyssa M. Riggins (NC Bar No. 52366)
alyssa.riggins@nelsonmullins.com
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 329-3800

BAKER HOSTETLER LLP
Mark E. Braden* (DC Bar No. 419915)
MBraden@bakerlaw.com
Katherine McKnight* (VA Bar No. 81482)
kmcknight@bakerlaw.com
1050 Connecticut Ave NW, Suite 1100 Washington
DC 20036
* Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

It is hereby certified that on this the 30th day of December, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com
Counsel for Plaintiffs North Carolina League of Conservation Voters, et al.

Sam Hirsch
Jessica Ring Amunson
Kali Bracey

Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
Counsel for the North Carolina State Board of Elections; Damon Circosta, Stella Anderson, Jeff Carmon III, Stacy Eggers IV, and Tommy Tucker, in their official capacities with the State Board of Elections

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
Counsel for Plaintiffs North Carolina League of Conservation Voters, et al.

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900

Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

Charlotte, NC 28246
adoerr@robinsonbradshaw.com
Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
Mitchellbrown@scsj.org
Katelin@scsj.org

J. Tom Boer
Olivia T. Molodanof
Hogan Lovells US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com
Counsel for Intervenor Common Cause

s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com

Exhibit 1

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

REBECCA HARPER, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

21 CVS 015426

Consolidated with
21 CVS 500085

AFFIDAVIT OF SEAN P. TRENDE

Now comes affiant Sean P. Trende, having been first duly cautioned and sworn, deposes and states as follows:

1. I am over the age of 18 and am competent to testify regarding the matters discussed below.
2. For the purposes of this litigation, I have been asked by counsel for Legislative Defendants to analyze relevant data and provide my expert opinions.
3. To that end, I have personally prepared the rebuttal report attached to this affidavit as Exhibit A, and swear to its authenticity and to the faithfulness of the opinions.

FURTHER THE AFFIANT SAYETH NAUGHT.

Executed on 28 December, 2021.

Sean P. Trende



Sean P. Trende

STATE OF FLORIDA

COUNTY OF PINELLAS

Sworn to and subscribed before me by online notarization this 28th day of December, 2021, by
SEAN P. TRENDE, who appeared by way of two-way audio/video communication technology,
and he provided his Ohio driver's license as identification.

Cynthia D. Glaros



Cynthia D. Glaros
Notary Public, State of Florida
My Commission Expires: 06/30/2022

Cynthia D. Glaros
Notary Public, State of Florida
Commission # GG228737
My Commission Expires June 30, 2022

Exhibit A

EXPERT REBUTTAL REPORT OF SEAN TRENDE

Now comes affiant Sean P. Trende, having been first duly cautioned and sworn, deposes and states as follows:

1. I am over the age of 18 and am competent to testify regarding the matters discussed below.
2. I currently reside at 1146 Elderberry Loop, Delaware, OH 43015. My e-mail is trende.3@buckeyemail.osu.edu.
3. I have been retained in this matter by the Legislative Defendants, and am being compensated at \$400.00 per hour for my work in this case.
4. My *curriculum vitae* is attached to this report as Exhibit 1.

EXPERT CREDENTIALS

5. I am currently enrolled as a doctoral candidate in political science at The Ohio State University. I have completed all of my coursework and have passed comprehensive examinations in both methods and American Politics. My coursework for my Ph.D. and M.A.S. included, among other things, classes on G.I.S. systems, spatial statistics, issues in contemporary redistricting, machine learning, non-parametric hypothesis tests and probability theory. I expect to receive my Ph.D. in May of 2021. My dissertation focuses on applications of spatial statistics to political questions.

6. I joined RealClearPolitics in January of 2009 after practicing law for eight years. I assumed a fulltime position with RealClearPolitics in March of 2010. My title is Senior Elections Analyst. RealClearPolitics is a company of around 40 employees, with offices in Washington D.C. It produces one of the most heavily trafficked political websites in the world, which serves as a one-stop shop for political analysis from all sides of the political spectrum

and is recognized as a pioneer in the field of poll aggregation. It produces original content, including both data analysis and traditional reporting. It is routinely cited by the most influential voices in politics, including David Brooks of *The New York Times*, Brit Hume of *Fox News*, Michael Barone of *The Almanac of American Politics*, Paul Gigot of *The Wall Street Journal*, and Peter Beinart of *The Atlantic*.

7. My main responsibilities with RealClearPolitics consist of tracking, analyzing, and writing about elections. I collaborate in rating the competitiveness of Presidential, Senate, House, and gubernatorial races. As a part of carrying out these responsibilities, I have studied and written extensively about demographic trends in the country, exit poll data at the state and federal level, public opinion polling, and voter turnout and voting behavior.

8. In particular, understanding the way that districts are drawn and how geography and demographics interact is crucial to predicting United States House of Representatives races, so much of my time is dedicated to that task.

9. I am currently a Visiting Scholar at the American Enterprise Institute, where my publications focus on the demographic and coalitional aspects of American Politics. My first paper focused on the efficiency gap, a metric for measuring the fairness of redistricting plans.

10. I am the author of *The Lost Majority: Why the Future of Government is up For Grabs and Who Will Take It*. In this book, I explore realignment theory. It argues that realignments are a poor concept that should be abandoned. As part of this analysis, I conducted a thorough analysis of demographic and political trends beginning in the 1920s and continuing through the modern times, noting the fluidity and fragility of the coalitions built by the major political parties and their candidates.

11. I co-authored the 2014 *Almanac of American Politics*. The Almanac is considered the foundational text for understanding congressional districts and the representatives of those districts, as well as the dynamics in play behind the elections. PBS’s Judy Woodruff described the book as “the oxygen of the political world,” while NBC’s Chuck Todd noted that “[r]eal political junkies get two *Almanacs*: one for the home and one for the office.” My focus was researching the history of and writing descriptions for many of the newly-drawn districts, including tracing the history of how and why they were drawn the way that they were drawn.

12. I have spoken on these subjects before audiences from across the political spectrum, including at the Heritage Foundation, the American Enterprise Institute, the CATO Institute, the Bipartisan Policy Center, and the Brookings Institution. In 2012, I was invited to Brussels to speak about American elections to the European External Action Service, which is the European Union’s diplomatic corps. I was selected by the United States Embassy in Sweden to discuss the 2016 elections to a series of audiences there, and was selected by the United States Embassy in Spain to fulfil a similar mission in 2018. I was invited to present by the United States Embassy in Italy, but was unable to do so because of my teaching schedule.

13. In the winter of 2018, I taught American Politics and the Mass Media at Ohio Wesleyan University. I taught Introduction to American Politics at The Ohio State University for three semesters from Fall of 2018 to Fall of 2019. In the Springs of 2020 and 2021, I taught Political Participation and Voting Behavior at The Ohio State University. This course spent several weeks covering all facets of redistricting: How maps are drawn, debates over what constitutes a fair map, measures of redistricting quality, and similar topics.

14. It is my policy to appear on any major news outlet that invites me, barring scheduling conflicts. I have appeared on both Fox News and MSNBC to discuss electoral and

demographic trends. I have been cited in major news publications, including *The New York Times*, *The Washington Post*, *The Los Angeles Times*, *The Wall Street Journal*, and *USA Today*.

15. I sit on the advisory panel for the “States of Change: Demographics and Democracy” project. This project is sponsored by the Hewlett Foundation and involves three premier think tanks: The Brookings Institution, the Bipartisan Policy Center, and the Center for American Progress. The group takes a detailed look at trends among eligible voters and the overall population, both nationally and in key states, to explain the impact of these changes on American politics, and to create population projections, which the Census Bureau abandoned in 1995. In 2018, I authored one of the lead papers for the project: “In the Long Run, We’re All Wrong,” available at <https://bipartisanpolicy.org/wp-content/uploads/2018/04/BPC-Democracy-States-of-Change-Demographics-April-2018.pdf>.

16. I previously authored an expert report in *Dickson v. Rucho*, No. 11-CVS-16896 (N.C. Super Ct., Wake County), which involved North Carolina’s 2012 General Assembly and Senate maps. Although I was not called to testify, it is my understanding that my expert report was accepted without objection. I also authored an expert report in *Covington v. North Carolina*, Case No. 1:15-CV-00399 (M.D.N.C.), which involved almost identical challenges in a different forum. Due to what I understand to be a procedural quirk, where my largely identical report from *Dickson* had been inadvertently accepted by the plaintiffs into the record when they incorporated parts of the *Dickson* record into the case, I was not called to testify.

17. I authored two expert reports in *NAACP v. McCrory*, No. 1:13CV658 (M.D.N.C.), which involved challenges to multiple changes to North Carolina’s voter laws, including the elimination of a law allowing for the counting of ballots cast in the wrong precinct. I was

admitted as an expert witness and testified at trial. My testimony discussed the “effect” prong of the Voting Rights Act claim. I did not examine the issues relating to intent.

18. I authored reports in *NAACP v. Husted*, No. 2:14-cv-404 (S.D. Ohio), and *Ohio Democratic Party v. Husted*, Case 15-cv-01802 (S.D. Ohio), which dealt with challenges to various Ohio voting laws. I was admitted and testified at trial in the latter case (the former case settled). The judge in the latter case ultimately refused to consider one opinion, where I used an internet map-drawing tool to show precinct locations in the state. Though no challenge to the accuracy of the data was raised, the judge believed I should have done more work to check that the data behind the application was accurate.

19. I served as a consulting expert in *Lee v. Virginia Board of Elections*, No. 3:15-cv-357 (E.D. Va. 2016), a voter identification case. Although I would not normally disclose consulting expert work, I was asked by defense counsel to sit in the courtroom during the case and review testimony. I would therefore consider my work *de facto* disclosed.

20. I filed an expert report in *Mecinas v. Hobbs*, No. CV-19-05547-PHX-DJH (D. Ariz. 2020). That case involved a challenge to Arizona’s ballot order statute. Although the judge ultimately did not rule on a motion in limine in rendering her decision, I was allowed to testify at the hearing.

21. I authored two expert reports in *Feldman v. Arizona*, No. CV-16-1065-PHX-DLR (D. Ariz.). Plaintiffs in that case challenged an Arizona law prohibiting the collection of voted ballots by third parties that were not family members or caregivers and the practice of most of the state's counties to require voters to vote in their assigned precinct. My reports and testimony were admitted. Part of my trial testimony was struck in that case for reasons unrelated to the merits of the opinion; counsel for the state elicited it while I was on the

witness stand and it was struck after Plaintiffs were not able to provide a rebuttal to the new evidence.

22. I authored an expert report in *Smith v. Perrera*, No. 55 of 2019 (Belize). In that case I was appointed as the court’s expert by the Supreme Court of Belize. In that case I was asked to identify international standards of democracy as they relate to malapportionment claims, to determine whether Belize’s electoral divisions (similar to our congressional districts) conformed with those standards, and to draw alternative maps that would remedy any existing malapportionment.

23. I authored expert reports in *A. Philip Randolph Institute v. Smith*, No. 1:18-cv-00357-TSB (S.D. Ohio), *Whitford v. Nichol*, No. 15-cv-421-bbc (W.D. Wisc.), and *Common Cause v. Rucho*, NO. 1:16-CV-1026-WO-JEP (M.D.N.C.), which were efficiency gap-based redistricting cases filed in Ohio, Wisconsin and North Carolina.

24. I also authored an expert report in the cases of *Ohio Organizing Collaborative, et al v. Ohio Redistricting Commission, et al* (No. 2021-1210); *League of Women Voters of Ohio, et al v. Ohio Redistricting Commission, et al* (No. 2021-1192); *Bria Bennett, et al v. Ohio Redistricting Commission, et al* (No. 2021-1198). These cases are pending in original action before the Supreme Court of Ohio.

25. I currently serve as one of two special masters appointed by the Supreme Court of Virginia to redraw the districts that will elect the commonwealth’s representatives to the House of Delegates, state Senate, and U.S. Congress.

SUMMARY OF WORK PERFORMED

26. I certify that the images attached as Exhibit 2 are true and correct copies of images that I created and that I describe below.

27. To create these images, I first examined the Complaints filed by plaintiffs in this action. I examined whether districts were challenged as either partisan gerrymanders or districts that diluted minority voting power. If I determined a district was challenged, I coded it as a “1.”

28. I then downloaded shapefiles for the enacted Congressional, State Senate and House of Representatives from the legislative redistricting website, <https://www.ncleg.gov/Redistricting>.

29. Using R, a widely utilized statistical programming tool with which I have extensive familiarity through work and coursework, I color-coded the districts by plaintiff group, based upon who challenged which districts. This produced the accompanying maps.

Exhibit 1

SEAN P. TRENDE
1146 Elderberry Loop
Delaware, OH 43015
strende@realclearpolitics.com

EDUCATION

Ph.D., The Ohio State University, Political Science, expected 2022.

M.A.S. (Master of Applied Statistics), The Ohio State University, 2019.

J.D., Duke University School of Law, *cum laude*, 2001; Duke Law Journal, Research Editor.

M.A., Duke University, *cum laude*, Political Science, 2001. Thesis titled *The Making of an Ideological Court: Application of Non-parametric Scaling Techniques to Explain Supreme Court Voting Patterns from 1900-1941*, June 2001.

B.A., Yale University, with distinction, History and Political Science, 1995.

PROFESSIONAL EXPERIENCE

Law Clerk, Hon. Deanell R. Tacha, U.S. Court of Appeals for the Tenth Circuit, 2001-02.

Associate, Kirkland & Ellis, LLP, Washington, DC, 2002-05.

Associate, Hunton & Williams, LLP, Richmond, Virginia, 2005-09.

Associate, David, Kamp & Frank, P.C., Newport News, Virginia, 2009-10.

Senior Elections Analyst, RealClearPolitics, 2009-present.

Columnist, Center for Politics Crystal Ball, 2014-17.

Gerald R. Ford Visiting Scholar, American Enterprise Institute, 2018-present.

BOOKS

Larry J. Sabato, ed., *The Blue Wave*, Ch. 14 (2019).

Larry J. Sabato, ed., *Trumped: The 2016 Election that Broke all the Rules* (2017).

Larry J. Sabato, ed., *The Surge: 2014's Big GOP Win and What It Means for the Next Presidential Election*, Ch. 12 (2015).

Larry J. Sabato, ed., *Barack Obama and the New America*, Ch. 12 (2013).

Barone, Kraushaar, McCutcheon & Trende, *The Almanac of American Politics 2014* (2013).

The Lost Majority: Why the Future of Government is up for Grabs – And Who Will Take It (2012).

PREVIOUS EXPERT TESTIMONY

Dickson v. Rucho, No. 11-CVS-16896 (N.C. Super. Ct., Wake County) (racial gerrymandering).

Covington v. North Carolina, No. 1:15-CV-00399 (M.D.N.C.) (racial gerrymandering).

NAACP v. McCrory, No. 1:13CV658 (M.D.N.C.) (early voting).

NAACP v. Husted, No. 2:14-cv-404 (S.D. Ohio) (early voting).

Ohio Democratic Party v. Husted, Case 15-cv-01802 (S.D. Ohio) (early voting).

Lee v. Virginia Bd. of Elections, No. 3:15-cv-357 (E.D. Va.) (early voting).

Feldman v. Arizona, No. CV-16-1065-PHX-DLR (D. Ariz.) (absentee voting).

A. Philip Randolph Institute v. Smith, No. 1:18-cv-00357-TSB (S.D. Ohio) (political gerrymandering).

Whitford v. Nichol, No. 15-cv-421-bbc (W.D. Wisc.) (political gerrymandering).

Common Cause v. Rucho, No. 1:16-CV-1026-WO-JEP (M.D.N.C.) (political gerrymandering).

Mecinas v. Hobbs, No. CV-19-05547-PHX-DJH (D. Ariz.) (ballot order effect).

Fair Fight Action v. Raffensperger, No. 1:18-cv-05391-SCJ (N.D. Ga.) (statistical analysis).

Pascua Yaqui Tribe v. Rodriguez, No. 4:20-CV-00432-TUC-JAS (D. Ariz.) (early voting).

COURT APPOINTMENTS

Appointed as Voting Rights Act expert by Arizona Independent Redistricting Commission

Appointed redistricting expert by the Supreme Court of Belize in *Smith v. Perrera*, No. 55 of 2019 (one-person-one-vote).

INTERNATIONAL PRESENTATIONS AND EXPERIENCE

Panel Discussion, European External Action Service, Brussels, Belgium, *Likely Outcomes of 2012 American Elections*.

Selected by U.S. Embassies in Sweden, Spain, and Italy to discuss 2016 and 2018 elections to think tanks and universities in area (declined Italy due to teaching responsibilities).

Selected by EEAS to discuss 2018 elections in private session with European Ambassadors.

TEACHING

American Democracy and Mass Media, Ohio Wesleyan University, Spring 2018.

Introduction to American Politics, The Ohio State University, Autumn 2018, 2019, 2020, Spring 2018.

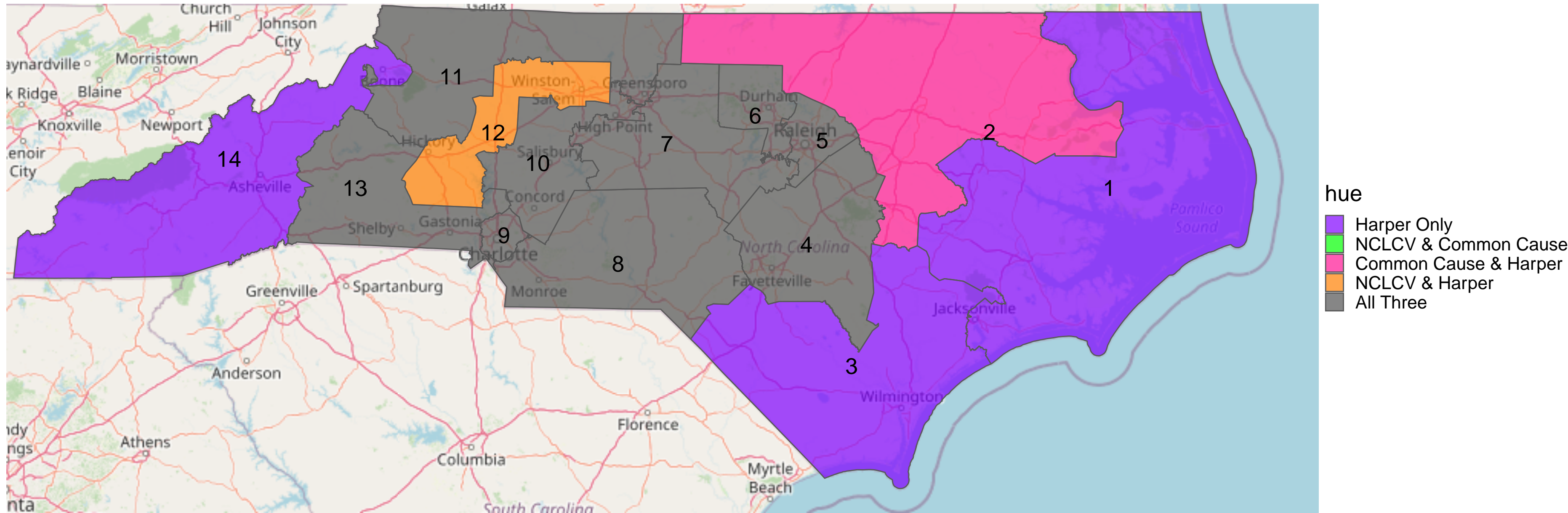
Political Participation and Voting Behavior, Spring 2020, Spring 2021.

REAL CLEAR POLITICS COLUMNS

Full archives available at http://www.realclearpolitics.com/authors/sean_trende/

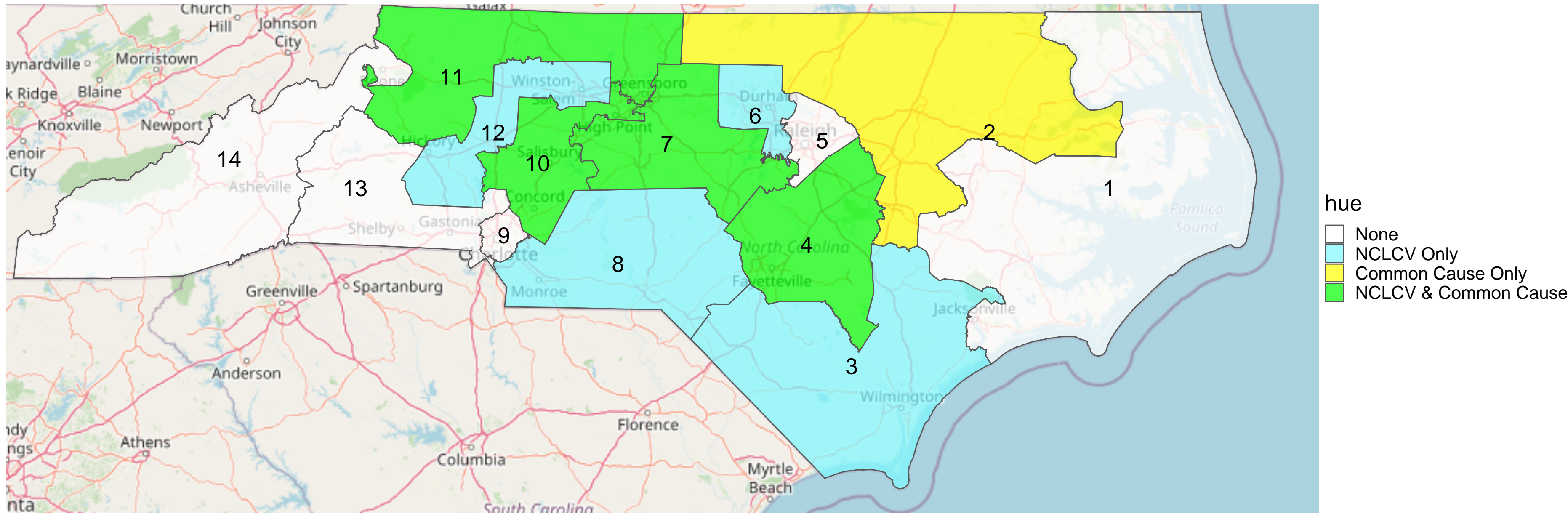
Exhibit 2

Congressional Districts Challenged As Political Gerrymanders, By Plaintiff Group



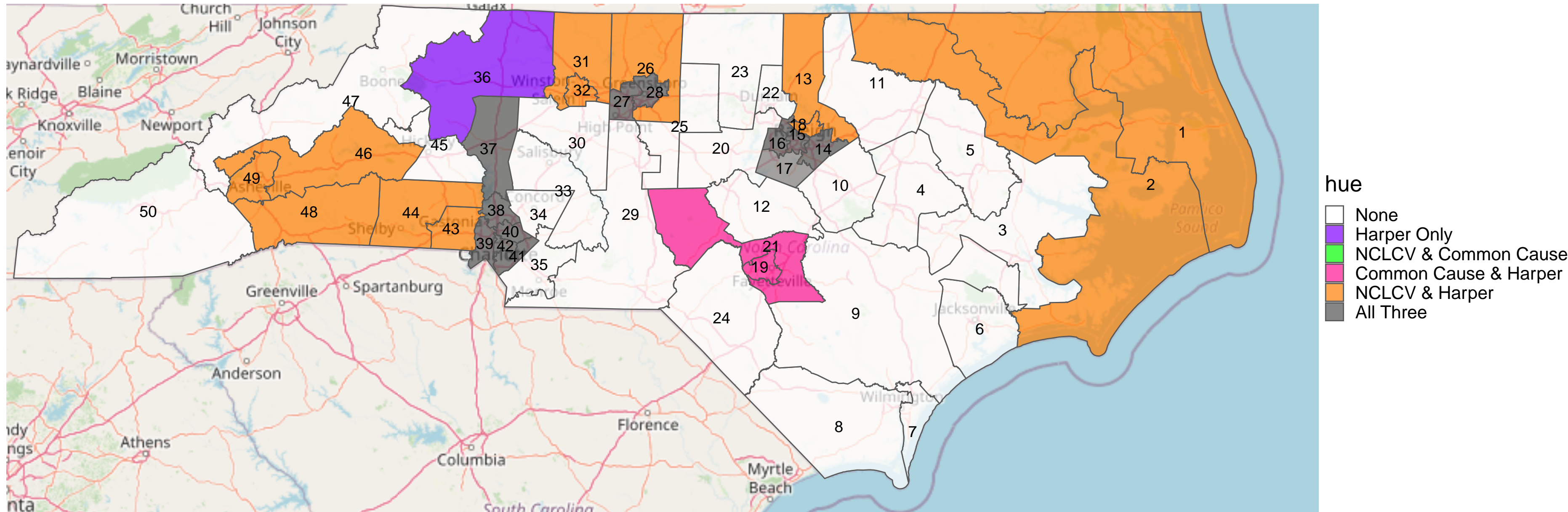
© OpenStreetMap contributors

Congressional Districts Challenged In Racial Vote Dilution Claim, By Plaintiff Group



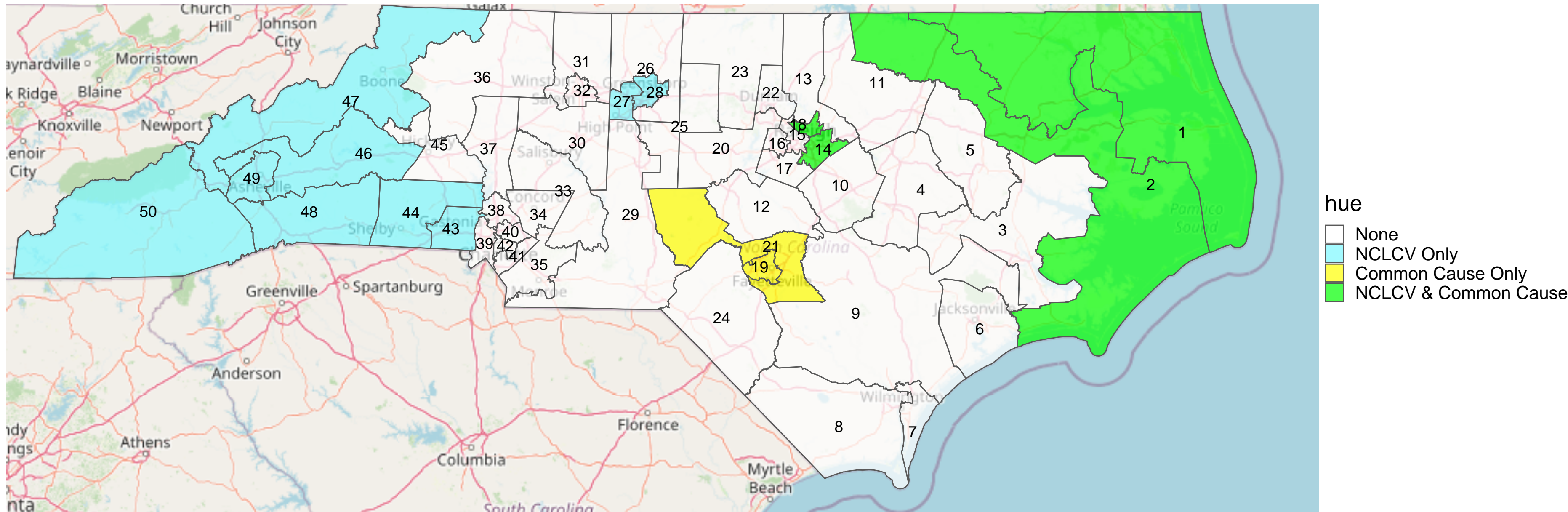
© OpenStreetMap contributors

State Senate Districts Challenged As Political Gerrymanders, By Plaintiff Group



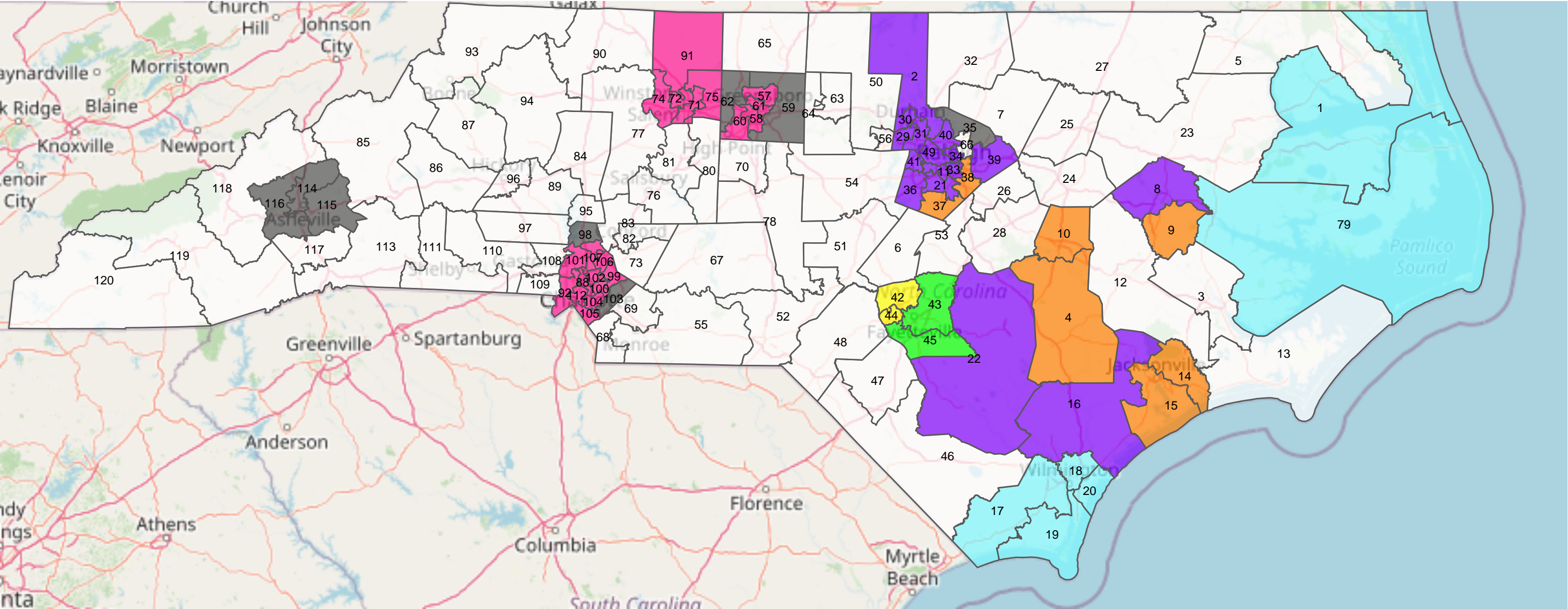
© OpenStreetMap contributors

State Senate Districts Challenged In Racial Vote Dilution Claim, By Plaintiff Group

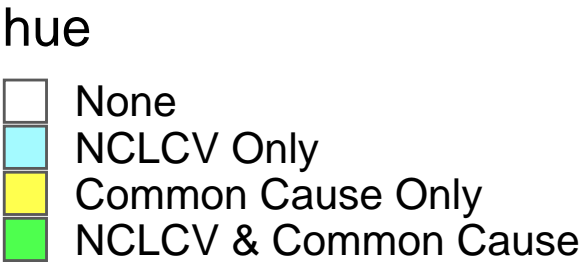
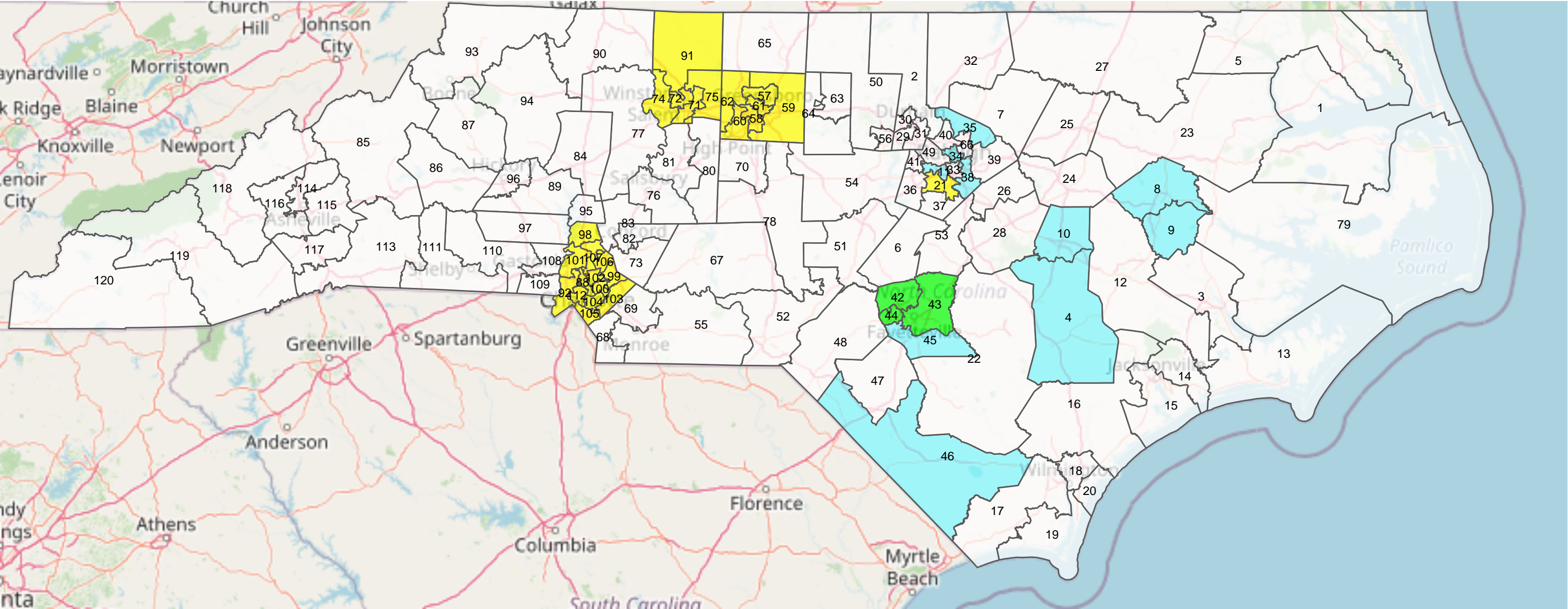


© OpenStreetMap contributors

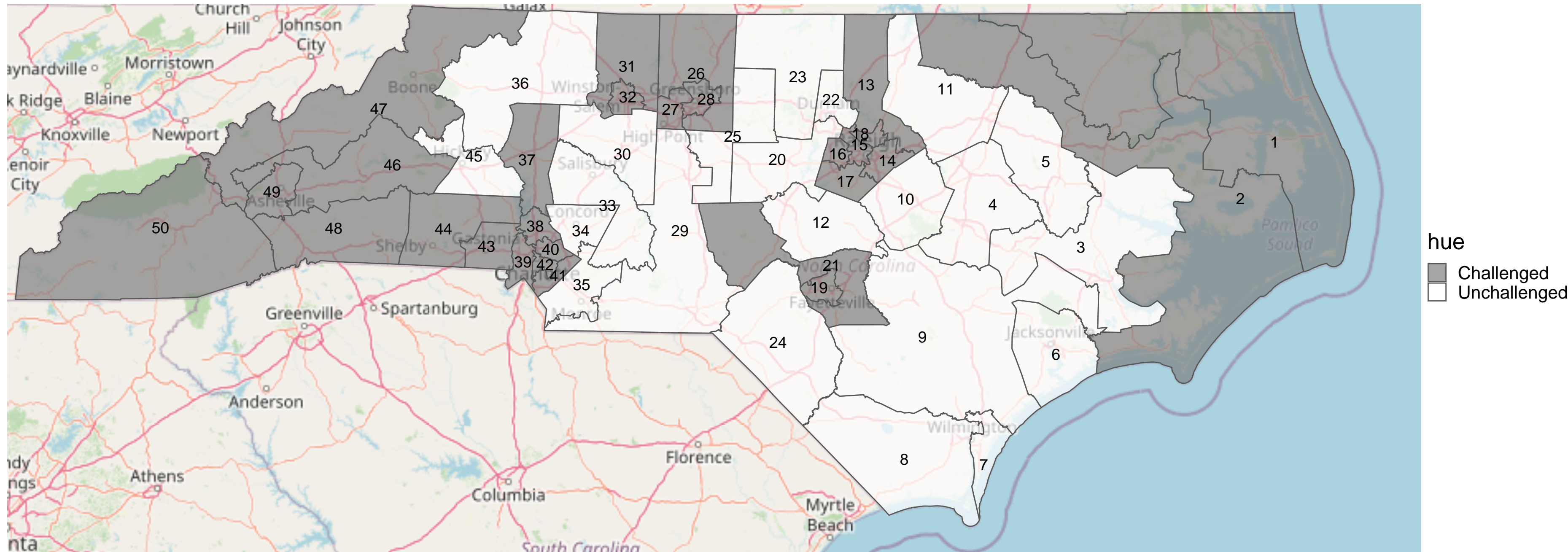
State House Districts Challenged As Political Gerrymanders, By Plaintiff Group



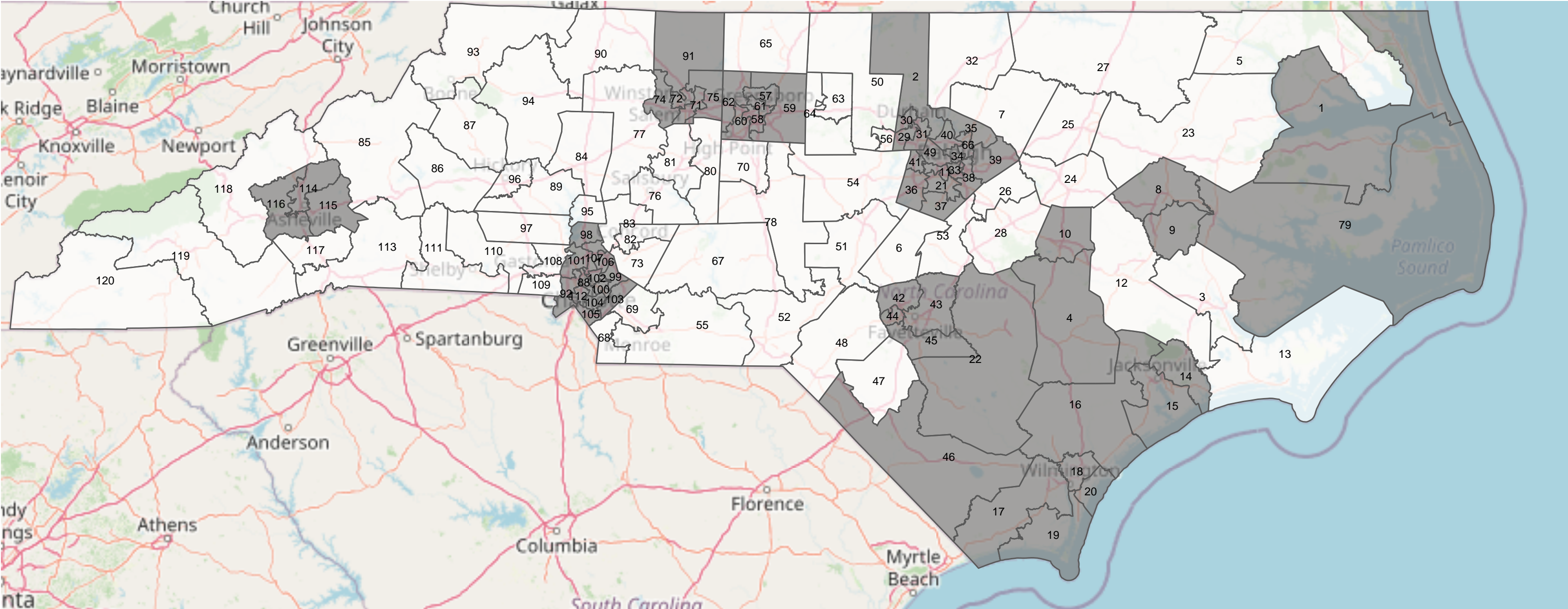
State House Districts Challenged In Racial Vote Dilution Claim, By Plaintiff Group



All State Senate Districts Challenged, By Plaintiff Group



All State House Districts Challenged, By Plaintiff Group



hue
 Challenged
 Unchallenged

Exhibit 2

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

COMMON CAUSE, *et al.*
Plaintiffs,

v.

Representative DAVID R. LEWIS,
in his official capacity as Senior
Chairman of the House Select
Committee on Redistricting, *et al.*,
Defendants.

ORDER ON OUTSTANDING
PRE-TRIAL MOTIONS

THIS MATTER comes before the undersigned three-judge panel upon the parties' outstanding pre-trial motions.

A hearing on outstanding pre-trial motions was held on July 10, 2019, and the matters were taken under advisement. After considering the motions and the parties' briefs, submissions, and arguments, and having reviewed the record proper, the Court, in its discretion, rules upon each motion as follows:

I. Plaintiffs' Motion in Limine to Preclude Legislative Defendants from Offering Evidence Related to the Voting Rights Act

Plaintiffs' motion seeks to preclude, pursuant to the equitable doctrine of judicial estoppel, Legislative Defendants from offering evidence or argument relating to the Voting Rights Act based on Legislative Defendants' prior assertions in *Covington v. North Carolina*, No. 1:15-CV-00399 (M.D.N.C.). Legislative Defendants filed a response arguing that judicial estoppel does not apply because Legislative Defendants do not intend to change their position in this litigation from that expressed to the federal court in *Covington*.

The Court, in its discretion, denies Plaintiffs' request at this time; however, Plaintiffs may reassert this objection to evidence or testimony relating to the Voting Rights Act at the time such evidence or testimony, if any, is proffered at trial.

II. Plaintiffs' Motion in Limine to Preclude Legislative Defendants and Intervenor Defendants from Introducing Expert Analysis Not Disclosed in Expert Reports

Plaintiffs' motion seeks to preclude, pursuant to Rule 26 of the North Carolina Rules of Civil Procedure, any Legislative Defendants' or Intervenor Defendants' experts from testifying or presenting evidence concerning any analyses or opinions not disclosed in their expert reports. On July 8, 2019, Plaintiffs filed a supplemental brief in support of their motion after the parties exchanged trial exhibit lists. In their supplemental brief, Plaintiffs argue that Legislative Defendants' exhibit list includes new, undisclosed expert analysis. Specifically, Plaintiffs ask the Court to exclude: 1) testimony from two legislative staffers, R. Erika Churchill and Raleigh Myers, who were never identified by Legislative Defendants as experts in this case; 2) four exhibits identified as figures created by Legislative Defendants' expert Dr. Trey Hood; 3) two exhibits created by Legislative Defendants' expert Dr. Janet Thornton; and, 4) any other exhibits or testimony relating to undisclosed expert analysis or opinions. Legislative Defendants argue in response that the information Plaintiffs seek to exclude does not constitute expert analysis.

A lay witness may testify to facts within their personal knowledge that “can be perceived by the senses.” *State v. Broyhill*, __ N.C. App. __, __, 803 S.E.2d 832, 838-39 (2017) (quoting N.C.G.S. § 8C-1, Rule 602 cmt.). Lay witnesses may state “instantaneous conclusions of the mind as to the appearance, condition . . . or physical state of . . . things, *derived from observation of a variety of facts presented to the senses at one and the same time.*” *Id.* (quoting *State v. Leak*, 156 N.C. 643, 647, 72 S.E. 567, 568 (1911) (emphasis in original)). In contrast, North Carolina’s Rule of Evidence 702 provides that an expert may give an opinion “[i]f . . . technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue,” and if the other requirements of Rule 702 apply. N.C.G.S. § 8C-1, Rule 702(a). Thus, an expert renders an expert opinion when he “moves beyond reporting what he saw or experienced through his senses, and turns to interpretation or assessment ‘to assist’ the jury based on his ‘specialized knowledge.’” *Broyhill*, __ N.C. App. at __, 803 S.E.2d at 839 (quoting *State v. Davis*, 368 N.C. 794, 798, 785 S.E.2d 312, 315 (2016)).

Based on the foregoing, the Court, in its discretion, grants in part and denies in part Plaintiffs’ motion, as follows:

- a. Plaintiffs’ motion is denied as to Legislative Defendants’ Trial Exhibits 024-1 through 024-13 (Affidavit of R. Erika Churchill and accompanying Exhibits). The exhibits and testimony presented by Ms. Churchill are a straightforward recitation of facts that are neither derived from specialized knowledge nor the product of assessment or interpretation, and therefore do not constitute expert analysis or opinion.
- b. For similar reasons, Plaintiffs’ motion is denied as to Legislative Defendants’ Trial Exhibits 025-8 through 025-79 (Exhibits 1-15 accompanying the Affidavit of Raleigh Myers).

- c. Plaintiffs' motion is granted as to Legislative Defendants' Trial Exhibits 025-81 through 025-397 (Exhibits 16-174 accompanying the Affidavit of Raleigh Myers). These exhibits display certain Geographic Information Systems "GIS" maps purporting to demonstrate, for example, instances where district boundaries dividing a voting district follow a precinct line. Inherent in the creation of such maps is the application of specialized knowledge that moves beyond a mere report of facts observed through the senses because it necessarily requires assessing and transmuting technical data. Moreover, expert assistance would be required to properly interpret the maps. Consequently, these exhibits constitute expert analysis or opinion.
- d. Plaintiffs' motion is granted as to Legislative Defendants' Trial Exhibits 141 through 144 (exhibits created by Dr. Trey Hood). These exhibits were not timely disclosed in Dr. Hood's initial expert report dated April 30, 2019, or in his supplemental report dated May 7, 2019, and are therefore excluded for failure to comply with N.C.G.S. § 1A-1, Rule 26(b)(4)(a)(2).
- e. For the same reasons, Plaintiffs' motion is granted as to Legislative Defendants' Trial Exhibits 170 and 171 (exhibits created by Dr. Janet Thornton) because these exhibits were not disclosed in Dr. Thornton's initial expert report or in her rebuttal report dated May 7, 2019.

III. Plaintiffs' Motion in Limine to Preclude Legislative Defendants from Introducing Evidence Under the Sword and Shield Doctrine

The Court entered an order on March 25, 2019, granting Legislative Defendants' February 5, 2019, motion for a protective order as to twelve legislators' and legislative staffers' claim of legislative privilege while also concluding that Legislative Defendants were estopped from withdrawing their prior assertions of legislative privilege for Defendants Lewis and Hise. In that same order, the Court noted that Plaintiffs could seek to be heard prior to trial on related evidentiary matters should Legislative Defendants offer 1) testimony from any of the twelve individuals who had asserted privilege, 2) evidence or testimony that derives directly or indirectly from non-public information provided by, or non-public communications with, the twelve individuals asserting privilege, or 3) evidence or

testimony that otherwise seeks to explain the legislature’s intent in drawing the challenged district plans, unless such testimony or evidence is based exclusively on the public legislative record or publicly available data. Plaintiffs’ motion seeks to preclude Legislative Defendants from offering such evidence and testimony.

A party cannot use a privilege both as a “shield” to prevent discovery and a “sword” to present evidence or claims that relate to the privileged information. *See, e.g. State v. Buckner*, 351 N.C. 401, 410 (2000); *Qurneh v. Colie*, 122 N.C. App. 553, 558 (1996). The Court, in its discretion, grants Plaintiffs’ requested relief in this motion as to the twelve legislators and legislative staff encompassed by the Court’s March 25, 2019, order. Legislative Defendants, however, are not precluded from offering evidence or testimony from legislators or legislative staff who have not previously asserted a claim of legislative privilege and will waive such privilege at trial, provided that Legislative Defendants do not offer: 1) evidence or testimony that derives directly or indirectly from non-public information provided by, or non-public communications with, the twelve individuals asserting privilege; or, 2) evidence or testimony that otherwise seeks to explain the General Assembly’s intent in drawing the challenged district plans, unless such testimony or evidence is based exclusively on the public legislative record or publicly available data.

IV. Plaintiffs’ Motion in Limine to Exclude Live Testimony from More Than One Intervenor-Defendant

Intervenor-Defendants intend to present testimony through affidavits for three of the Intervenorors and through live testimony for the remaining four Intervenorors. Plaintiffs’ motion seeks, pursuant to Rules 401 and 403 of the North

Carolina Rules of Evidence, to limit live testimony to at most only one individual Intervenor on the grounds that additional testimony will be irrelevant, likely duplicitous, and will likely cause undue delay.

Under Rule 611 of the North Carolina Rules of Evidence, the Court “shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth [and] (2) avoid needless consumption of time.” N.C.G.S. § 8C-1, Rule 611. The Court, in its discretion, denies Plaintiffs’ motion; however, Intervenor Defendants are cautioned that the Court will, if necessary, exercise its authority under Rule 611 to limit live testimony from Intervenor Defendants to make the presentation of evidence effective for the ascertainment of truth and avoid needless consumption of time.

V. *Intervenor-Defendants’ Motion in Limine to Exclude Evidence of Dismissed Criminal Charges*

Intervenor Defendants’ motion seeks to exclude any and all evidence, references to evidence, testimony, or argument relating to Intervenor Reginald Reid’s dismissed criminal charges. Plaintiffs have responded that Plaintiffs will not offer evidence relating to Intervenor Reid’s dismissed criminal charges at trial. Accordingly, the Court, in its discretion, grants Intervenor Defendants’ motion.

VI. *Plaintiffs’ Emergency Motion to Compel Legislative Defendants to Produce Revised Calculations of Dr. Jeffrey Lewis*

Plaintiffs’ emergency motion seeks to compel revised calculations of Dr. Jeffrey Lewis that Plaintiffs requested from Legislative Defendants immediately

following Dr. Lewis's deposition on June 11, 2019. The Court, in its discretion, grants Plaintiffs' request to compel Legislative Defendants to produce to Plaintiffs the revised calculations of Dr. Lewis without delay.

Plaintiffs also request fees and costs, pursuant to Rule 37(a) of the North Carolina Rules of Civil Procedure, incurred in obtaining an order compelling Legislative Defendants to produce the revised calculations sought in their emergency motion to compel. The Court, in its discretion, declines to award Plaintiffs fees and costs in connection with this motion.


Conclusion


WHEREFORE, the Court, for the reasons stated herein and in the exercise of its discretion, hereby ORDERS as follows:

1. Plaintiffs' motion *in limine* to preclude Legislative Defendants from offering evidence or argument relating to the Voting Rights Act is DENIED in accordance with the terms of this Order.
2. Plaintiffs' motion *in limine* to preclude Legislative and Intervenor Defendants from introducing expert testimony regarding analysis or opinions not disclosed in expert reports is DENIED in part and GRANTED in part, as follows and in accordance with the terms of this Order:
 - a. Plaintiffs' motion is denied as to Legislative Defendants' Trial Exhibits 024-1 through 024-13.
 - b. Plaintiffs' motion is denied as to Legislative Defendants' Trial Exhibits 025-8 through 025-79 and granted as to Legislative Defendants' Trial Exhibits 025-81 through 025-397.
 - c. Plaintiffs' motion is granted as to Legislative Defendants' Trial Exhibits 141-144.
 - d. Plaintiffs' motion is granted as to Legislative Defendants' Trial Exhibits 170 and 171.

3. Plaintiffs' motion *in limine* to preclude Legislative Defendants from introducing evidence or testimony under the sword and shield doctrine is GRANTED; however, Legislative Defendants are not precluded from offering evidence or testimony from legislators who have not asserted legislative privilege, provided such evidence and testimony is in accordance with the terms of this Order.
4. Plaintiffs' motion *in limine* to limit Intervenor Defendants to live testimony from only one Intervenor is DENIED in accordance with the terms of this Order.
5. Intervenor Defendants' motion *in limine* to exclude evidence of Intervenor Reid's dismissed criminal charges is GRANTED.
6. Plaintiffs' emergency motion to compel is GRANTED in part, as follows:
 - a. Legislative Defendants shall produce to Plaintiffs by 10:00 a.m. on July 15, 2019, the revised calculations of Dr. Jeffrey Lewis.
 - b. Plaintiffs' request for fees and costs is denied.

So ORDERED, this the 16 day of July, 2019.



Paul C. Ridgeway, Superior Court Judge

Joseph N. Crosswhite, Superior Court Judge

Alma L. Hinton, Superior Court Judge

Certificate of Service

The undersigned certifies that the foregoing was served upon all parties by electronic mail, addressed as follows:

Edwin M. Speas, Jr.
Caroline P. Mackie
Poyner Spruill LLP
espeas@poynerspruill.com
cmackie@poynerspruill.com
*Counsel for Common Cause,
The North Carolina Democratic Party
And the Individual Plaintiffs*

R. Stanton Jones
David P. Gersch
Elisabeth S. Theodore
Daniel F. Jacobson
Arnold & Porter Kaye Scholer LLP
Stanton.jones@arnoldporter.com
David.gersch@arnoldporter.com
Elisabeth.theodore@arnoldporter.com
Daniel.jacobson@arnoldporter.com
*Counsel for Common Cause
And for Individual Plaintiffs*

Mark E. Braden
Richard Raile
Trevor Stanley
Katherine McKnight
Elizabeth Scully
Erica Prouty
Baker & Hostetler LLP
rRaile@bakerlaw.com
mbraden@bakerlaw.com
tstanley@bakerlaw.com
kmcknight@bakerlaw.com
EScully@bakerlaw.com
eprouthy@bakerlaw.com
Attorneys for Legislative Defendants

Marc E. Elias
Aria C. Branch
Abha Khanna
Perkins Coie LLP
melias@perkinscoie.com
ABranch@perkinscoie.com
akhanna@perkinscoie.com
*Counsel for Common Cause
And the Individual Plaintiffs*


Phillip J. Strach
Michael McKnight
Alyssa Riggins
Ogletree Deakins
Phillip.strach@ogletree.com
Michael.mcknight@ogletree.com
Alyssa.riggins@ogletree.com
Counsel for Legislative Defendants

Stephanie A. Brennan
Amar Majmundar
Paul Cox
NC Department of Justice
sbrennan@ncdoj.gov
amajmundar@ncdoj.gov
pcox@ncdoj.gov
*Counsel for the State of North
Carolina and members of the State
Board of Elections*

Katelyn Love
NC State Board of Elections
legal@ncsbe.gov
Counsel for the State Board of Elections

John E. Branch, III
Nathaniel J. Pencook
Andrew D. Brown
Shanahan Law Group PLLC
jbranch@shanahanlawgroup.com
npencook@shanahanlawgroup.com
abrown@shanahanlawgroup.com
Attorneys for Defendant-Intervenors

This the 18th day of July, 2019.



Kellie Z. Myers
Trial Court Administrator
10th Judicial District
kellie.z.myers@nccourts.org

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, INC., et al.,

REBECCA HARPER, et al.,

COMMON CAUSE,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House Standing
Committee on Redistricting, et al.

Defendants.

***COMMON CAUSE AND HARPER
PLAINTIFFS' JOINT MOTION FOR
DISCOVERY SANCTIONS***

Pursuant to North Carolina Rules of Civil Procedure 26 and 37, *Common Cause* and *Harper* Plaintiffs jointly move for discovery sanctions based on Legislative Defendants' admitted spoliation of key evidence, including "concept maps" used by Defendant Representative Hall during the map-drawing process and data regarding the creation, evaluation, and use of those maps. As this Court has acknowledged, these public records go to the heart of this matter, but Legislative Defendants have now informed Plaintiffs that all of them are destroyed, with no trace remaining. Moreover, Legislative Defendants' supplemental discovery responses served yesterday do not comply with the Court's December 29, 2021 Order requiring that they "fully respond" to the discovery requests and "identify the lost or destroyed material with specificity." Dec. 29 Order on Plaintiffs' Mot. to Compel at 6-7. Legislative Defendants failed to fully respond, yet again simply

producing other documents that are already in the public record, and refused to provide any specificity regarding the destroyed data. *Common Cause* and the *Harper* Plaintiffs therefore respectfully request that the Court (1) draw an adverse inference that the destroyed materials would have shown that Legislative Defendants considered racial and partisan data during the map-drawing process; (2) preclude Legislative Defendants from introducing testimony or evidence that Legislative Defendants did not consider partisan or racial data during the map-drawing process; (3) find that certain “designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order” under North Carolina Rules of Civil Procedure 37; and (4) order any other sanctions that the Court deems appropriate in its discretion and inherent authority to manage this litigation.

BACKGROUND

On December 21, 2021, *Harper* Plaintiffs served interrogatories and requests for production on Legislative Defendants seeking documents and information concerning the 2021 map-drawing process. After Legislative Defendants refused to formally respond to the requests, claiming that all responsive information and materials were already in the public record online, *Harper* Plaintiffs moved to compel responses to their discovery requests on December 27, 2021. That same day, the Court granted *Harper* Plaintiffs’ first motion to compel, finding that the information and documents sought “goes to the heart of the dispute in this redistricting matter,” Order on Mot. to Compel at 4, and ordered compliance by 9 a.m. December 28, 2021.

Meanwhile, Representative Hall testified in his deposition that between his map-drawing sessions at the public terminal, he repeatedly met with his then-General Counsel, Dylan Reel, and others for “strategy sessions” about the map-drawing in a private room adjacent to the public map-

drawing room. Rough Transcript of Rep. Hall Deposition (“Rep. Hall Tr.”) at 133:20-134:20.¹ In several of these strategy sessions, Representative Hall, Mr. Reel, and in some cases Speaker Moore’s Chief of Staff Neil Inman (and potentially others) reviewed “concept maps” of several county groupings for the House map. *Id.* at 118:4-7. Representative Hall would study these “concept maps” in the private room, and then rely on them to draw district lines for that particular county cluster on the public terminal. *Id.* at 122:4-123:15. In at least “a couple” of instances, Mr. Reel accompanied Representative Hall into the public map-drawing room and displayed an image of a “concept map” on his smartphone while Representative Hall drew the district lines on the public terminal. *Id.* at 212:19-213:16. Representative Hall testified that, to the best of his recollection, he relied on these concept maps for “around five” House county clusters in total, including Wake County, Pitt County, the Forsyth-Stokes cluster, and (potentially) Mecklenburg County, and possibly others. *Id.* at 125:1-129:21.

Representative Hall testified that, unlike maps drawn on the public terminals, these “concept maps” *are not publicly available*. *Id.* at 150:9-20. There is no public information—no video, no audio, no meeting notes, no list of attendees, nothing—about Representative Hall’s and Mr. Reel’s “strategy sessions” during which these “concept maps” were developed and discussed, or about the “concept maps” themselves. *Id.* at 145:25-146:8, 150:9-15, 151:19. These strategy sessions were ad hoc, not “scheduled at all.” *Id.* at 124:14-17.

On the evening of December 27—following Representative Hall’s deposition and after this Court granted Plaintiffs’ first motion to compel—counsel for *Harper* Plaintiffs emailed Legislative Defendants’ counsel to clarify that their first interrogatory includes third parties, like Mr. Reel. Dec. 28 Mot. to Compel Adequate Responses and For Other Appropriate Relief at 5. Likewise,

¹ The rough transcript of Representative Hall’s deposition was attached to *Harper* Plaintiffs Motion to Compel.

Harper Plaintiffs clarified that their second discovery requests included the “concept maps” and any related information or data. *Id.*

In their response on the morning of December 28, Legislative Defendants identified for the first time a number of individuals who participated in drawing maps whose participation was not publicly known, contradicting their previous assertion to Plaintiffs and to this Court that all the information sought by Plaintiffs was “publicly available.” *Id.* at 5. In their response to *Harper* Plaintiffs’ interrogatories, Legislative Defendants acknowledged that Representative Hall relied on “concept maps.” *Id.* at 6. They asserted that “no partisan or racial data was used or relied upon by Defendants,” but that they “cannot speak for ... the ... third parties identified above,” such as Mr. Reel and Mr. Inman. *Id.* In response to the same interrogatory, however, Legislative Defendants also asserted that “Defendant Hall and Mr. Reel did not use any racial or political data in preparing these concept maps.” *Id.* But according to Legislative Defendants, “[n]either Defendant Hall nor the other Legislative Defendants have copies of these concept maps or any information or data related to such maps.” *Id.* (emphasis added).

On December 28, *Harper* Plaintiffs then filed a second motion to compel, which the Court granted, again ordering Legislative Defendants to fully comply with the *Harper* Plaintiffs’ discovery requests. Dec. 29 Order on Mot. to Compel at 6-7. The Court found “unpersuasive” Legislative Defendants’ contention that they had no duty to disclose the concept maps and other data at issue on the theory that these materials were controlled not by them, but by Dylan Reel. *Id.* at 5. The Court referred to N.C.G.S. § 120-133(a), which establishes in relevant part that “documents prepared by legislative employees for legislators concerning redistricting the North Carolina General Assembly or the Congressional Districts are no longer confidential and become public records upon the act establishing the relevant districting plan becoming law. Present and

former legislative employees may be required to disclose information otherwise protected by N.C.G.S. § 120-132 concerning redistricting the North Carolina General Assembly or the Congressional Districts upon the act establishing the relevant district plan becoming law.” *Id.* at 5 (citing N.C.G.S. § 120-133(a)). In applying this statutory language, the Court concluded “that although Mr. Dylan Reel is no longer an employee of Representative Hall, he is plainly a legislative employee, N.C.G.S. § 120-129(2), and the documents provided by Mr. Reel for Representative Hall were no longer confidential and become public records as of November 4, 2021, when S.L. 2021-175 (House Bill 976) was enacted, N.C.G.S. § 120-133(a).” *Id.* at 6. Accordingly, the Court found that the concept maps and any and all information/documents/data relating to the concept maps were sufficiently in “Representative Hall’s control and custody” such that he could easily request them from his former staffer “on demand.” *Id.* at 6.

The Court specifically ordered that:

2. Information, documents, and data not within the physical possession of Legislative Defendants shall be obtained by Legislative Defendants from legislative employees participating in the private discussions that guided the map-drawing process, including but not limited to Representative Hall’s former legislative employee, Mr. Dylan Reel.

3. If the concept maps or any related information identified in Legislative Defendants’ response to Interrogatory No. 2 have been lost or destroyed, Legislative Defendants shall identify the lost or destroyed material with specificity and certify to that loss or destruction.

Id. at 6-7.

The next morning, Legislative Defendants served supplemental responses and objections. Exs. A, B. Legislative Defendants again did not produce the concept maps or any related data or information. Instead, Legislative Defendants’ sole reference to the concept maps came in a single sentence in the supplemental interrogatory responses: “Defendant Hall states that after the Court’s order of December 29, 2021, he called Dylan Reel and Mr. Reel stated that the concept maps that were created *were not saved, are currently lost and no longer exist.*” Ex. A at 4 (emphasis added).

Despite the Court’s December 29 order requiring “Legislative Defendants [to] identify the lost or destroyed material with specificity,” Legislative Defendants provided no further information about the missing files—not even basic facts about the devices on which these files were created or stored, or the nature of the files themselves—nothing. Nor did Legislative Defendants provide answers to important questions about the circumstances of the files’ creation, retention, and destruction, including:

- Does the device(s) on which the concept maps were created still exist? If so, what type of device(s) is it? Who currently has custody?
- Was that device(s) issued by the General Assembly?
- What software program(s) or web application(s) were used to create the concept maps? What types of data are included in that software or application, or were otherwise loaded onto the device(s) used to create the concept maps?
- What types of files were lost? (This Court’s order required the production of not just the maps themselves, but “any related information,” consistent with *Harper* Plaintiffs’ request. Order on Mot. Compel 7. Yet Legislative Defendants’ response refers only to “the concept maps.” Were there other documents, files, data, etc., used to create the concept maps? If so, what happened to that information?)
- Did Mr. Reel delete these files, or were they never saved in the first place? (The notion that draft redistricting maps were not *ever* saved is highly unusual, but if true may suggest that they were created using a web application like Dave’s Redistricting, which has partisan election data preloaded.)
- If they were deleted, why and when? If they were not saved, why not?

- Did Mr. Reel consult with Legislative Defendants before deleting (or declining to save) any of these files? Did they direct him to delete or not save them? Was Mr. Reel made aware of the retention policy for these files?
- What about Mr. Reel’s smartphone? (Even if the original files “were not saved,” there is undisputed evidence that Mr. Reel had images of the concept maps on his phone, which he at times carried into the public map-drawing room. It is common knowledge that images on phones generally do not disappear unless they are deleted.)
- Did Legislative Defendants asked Mr. Reel any of these questions yesterday, or did they simply ask whether the files existed and report “no”?

In addition to their one-sentence response regarding the loss or destruction of the concept maps, Legislative Defendants tripped down on their approach of providing only public-record materials, yet again pointing Plaintiffs to the North Carolina Redistricting website and minutes, documents and maps publicly considered by the Senate and House Standing Committees on Redistricting and Elections. They also produced documents from a previous redistricting case during the last decade, *Covington v. North Carolina*.

ARGUMENT

This is a straightforward case for discovery sanctions. First, by deleting or failing to save significant evidence of legislative intent, Legislative Defendants have engaged in quintessential spoliation. Second, Legislative Defendants’ threadbare responses defy this Court’s order directing them to identify any lost or destroyed material “with specificity”—independently prejudicing Plaintiffs and warranting sanctions. Under established law, the proper sanction here is, at minimum, an inference that the destroyed material supports that Legislative Defendants considered

election data and/or racial data in drawing the 2021 Plans, and an order precluding Legislative Defendants from introducing evidence or testimony attempting to prove the opposite.

I. Legislative Defendants Spoliated Highly Relevant Evidence, Warranting an Adverse Inference.

Spoliation is “the destruction or material alteration of evidence or . . . the failure to preserve property for another’s use as evidence in pending or reasonably foreseeable litigation.” *EEOC v. Womble Carlyle Sandridge & Rice, LLP*, No. 1:13-CV-46, 2014 U.S. Dist. LEXIS 793, at *6 (M.D.N.C. Jan. 6, 2014) (quoting *Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2001)). Where an individual “by his own tortious act withholds evidence by which the nature of his case would be manifested, every presumption to his disadvantage will be adopted.” *McLain v. Taco Bell Corp.*, 137 N.C. App. 179, 183, 527 S.E.2d 712, 716 (2000) (quoting *Yarborough v. Hughes*, 139 N.C. 199, 209, 51 S.E. 904, 908 (1905)). But a party need not commit a tort to engage in spoliation: “Although destruction of evidence in bad faith ‘or in anticipation of trial may strengthen the spoliation inference, such a showing is not essential to permitting the [adverse] inference.’” *McLain*, 137 N.C. App. at 184, 527 S.E.2d at 716 (quoting *R.I. Hosp. Trust Nat’l Bank v. E. Gen. Contractors, Inc.*, 674 A.2d 1227, 1234 (R.I. 1996)). Rather, to establish a prima facie case of spoliation, a party must show that the spoliator (1) intentionally destroyed or failed to preserve (2) potentially relevant materials (3) while aware of the possibility of future litigation. *Arndt v. First Union Nat’l Bank*, 170 N.C. App. 518, 528, 613 S.E.2d 274, 281 (2005); *Praxair, Inc. v. Airgas, Inc.*, 2000 NCBC LEXIS 5, at *57 (N.C. Super. Ct. Aug. 14, 2000).

A. Legislative Defendants Engaged in Spoliation.

Legislative Defendants now admit that the requested concept maps and related materials “were not saved, are currently lost, and no longer exist.” Ex. A at 4. This Court has properly held that these destroyed materials are highly relevant to Plaintiffs’ claims, explaining that the “sought

after information and documentation pertaining to the Enacted Plans including the identification of all persons who took part in the drawing of the Enacted Plans in any way as well as all documents or data relied upon by those involved in the map drawing process, *goes to the heart of the dispute* in this redistricting litigation.” Dec. 27 Order on Mot. to Compel at 4 (emphasis added). Thus, the only question regarding spoliation is whether Legislative Defendants were aware of the possibility of future litigation and were therefore aware of an obligation to preserve evidence. Importantly, this obligation to preserve evidence may arise prior to the filing of a complaint where the opposing party is on notice that litigation is likely to be commenced. *McLain*, 137 N.C. App. at 187, 527 S.E.2d at 718.

Here, there can be no dispute that Legislative Defendants in general—and Representative Hall specifically—were aware of the potential for future litigation that would create an obligation to preserve evidence. First, redistricting in North Carolina has consistently been litigated in each cycle. Legislative Defendants mentioned and cited cases from the last redistricting cycle during the redistricting process (although their interpretation of the cited cases was inaccurate). Second, in one of the very first committee meetings called for the purpose of beginning the 2021 redistricting process in North Carolina, Representative Hall stated:

Members, the data – as most members of the committee know, the data will be released by the Census Bureau today at about 1:00 p.m., as best we can tell, and so it is the goal of the chairs of this committee to adopt this criteria this morning. And one of the reasons for that is as we all understand, *the redistricting process is a very litigious process, not just in North Carolina but really across the country*, and because of that, the chairs think it’s important to get criteria adopted before the data comes out so that no one can reasonably say that the chairs somehow took the data and then drew the criteria to meet the desires of the chairs.

Ex. C (8/12/2021 Joint Committee Meeting, Tr. 6:3-23) (emphasis added). Much of the committee debate regarding the approved redistricting criteria and then the county clustering options designated by the committee chairs focused on whether they complied with North Carolina

redistricting law. Moreover, on August 10, 2021, shortly after the Chairs’ proposed redistricting criteria were made public, public comment from counsel Allison J. Riggs, of the Southern Coalition for Social Justice, raised issues about the lawfulness of the purported “race-blind” map-drawing process and the county groupings dictated by the committee chairs. *Common Cause* Compl. in Intervention ¶ 47. Given the history of redistricting litigation in North Carolina, Representative Hall’s own acknowledgement of that history, and the nature of the committee and public discourse surrounding the redistricting process *prior to any maps being drawn*, the Legislative Defendants were plainly on notice of the potential for litigation with regard to the 2021 maps as early as August 12, 2021.

Independent from the threat of litigation, Legislative Defendants had a separate statutory obligation to preserve these records. As the Court noted in its December 29 Order, redistricting communications² under N.C.G.S. § 120-133 “become public records upon the act establishing the relevant district plan becoming law.” Public records, under state law, are prohibited from being destroyed without the consent of the Department of Natural and Cultural Resources. *See* N.C.G.S. § 121-5 (prohibiting any “person” from destroying public records”); N.C.G.S. § 132-3 (prohibiting a “public official” from destroying public records). Violating these laws is a misdemeanor offense. *Id.* This Court has found Mr. Dylan Reel to be a legislative employee under N.C.G.S. § 120-129(2) and deemed Representative Hall to have control and custody over his former staffer’s information, documents, and data. Dec. 29 Order at 6. Both individuals had a duty and obligation, subject to criminal penalty, to maintain redistricting records that would ultimately become public

² “Redistricting communications” are defined as “all drafting and information requests to legislative employees and documents prepared by legislative employees for legislators concerning redistricting the North Carolina General Assembly or the Congressional Districts.” N.C.G.S. § 120-133

records. Representative Hall especially, as the custodian of those public records, *see* N.C.G.S. § 132-2, was obligated to ensure they were preserved. Yet, the records were destroyed.

Here, spoliation is established because the record is clear that Legislative Defendants were aware of circumstances that were likely to give rise to future litigation (and independent state law grounds for preservation), but failed to prevent the destruction of highly relevant evidence in its possession.

B. Legislative Defendants’ Destruction of Key Evidence Justifies an Adverse Inference.

With spoliation established, the Court has discretion to pursue a wide range of actions both for the purpose of leveling the evidentiary playing field and for sanctioning the improper conduct. Here, at a minimum, the Court should impose an adverse inference—*i.e.*, infer that the destroyed material would support that Legislative Defendants considered partisan information when drafting the 2021 Plans.

When imposing sanctions, “the trial court has discretion to pursue a wide range of actions both for the purpose of leveling the evidentiary playing field and for sanctioning the improper conduct.” *Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 156 (4th Cir. 1995) (cited by Judge Tennille in *Praxair*, *supra*). One available sanction is a so-called “adverse inference”—an inference that the destroyed evidence would have been unfavorable to the party that destroyed it. *McLain v. Taco Bell Corp.*, 137 N.C. App. 179, 182-192, 527 S.E.2d 712, 715 - 721 (N.C. App. 2000). “[T]o qualify for the adverse inference, the party requesting it must ordinarily show that the spoliator was on notice of the claim or potential claim at the time of the destruction.” *McLain*, 137 N.C. App. at 187, 527 S.E.2d at 718 (quotation omitted). The evidence lost must be “pertinent” and “potentially supportive of plaintiff’s allegations.” *Id.* at 188, 527 S.E.2d at 718.

That standard is amply met here. As discussed above, Legislative Defendants were on notice of potential redistricting claims at the time that the concept maps were destroyed. Although Legislative Defendants offer no specificity regarding when or how the documents were destroyed, it is clear based on his deposition testimony that Representative Hall used the concept maps during the map-drawing process. *See* Rep. Hall Tr. at 133:20-134:20 (met for private “strategy sessions” with Mr. Reel), 118:4-7 (reviewed the concept maps during the strategy sessions), 122:4-123:15 (relied on the concept maps to draw district lines on the public terminal). The maps therefore could not have been destroyed until after Representative Hall was finished with his map-drawing, at which point the Legislative Defendants had been on notice not just of potential litigation generally, but of litigation likely to focus squarely on the intent of map-makers as they drew the 2021 Plans—as is true of all redistricting litigation.

Moreover, because Representative Hall admitted to reviewing and relying on the concept maps while drawing district lines, they are at the center of Plaintiffs’ allegations that Legislative Defendants privately utilized race and partisan data when drawing the enacted plans while publicly stating otherwise. That is true not just of the House plan—where pre-drawn concept maps directly support claims that the map-maker considered impermissible outside information—but of the Senate and Congressional plans—as Representative Hall’s reliance on such maps created by partisan staffers for the House is circumstantial evidence that other legislators used a similar process for the other maps.

Finally, the overwhelming evidence demonstrates that Legislative Defendants intentionally destroyed the evidence and sought to cover up that those concept maps existed. To be sure, deliberate destruction is not a prerequisite to the imposition of an adverse inference: North Carolina courts hold that the inference is available if a party, “whether in bad faith or not,

misplaced, suppressed or destroyed” relevant evidence. *See McClain*, 137 N.C. App. at 188. “The proponent of a missing document inference need not offer direct evidence of a cover-up to set the stage for the adverse inference. Circumstantial evidence will suffice.” *Id.* at 186, 527 S.E.2d at 718; *Arndt v. First Union Nat. Bank*, 613 S.E.2d 274, 281-283 (N.C. App. 2005). But the remarkable evidence here supports a finding of bad faith, confirming the need for significant sanctions.

First, the existence of the concept maps flies in the face of Legislative Defendants’ public statements during hearings regarding the transparency of the redistricting process. Specifically, in the following exchanges between Representative Hall and his colleagues in House Redistricting Committee meetings on October 5 and November 1, Representative Hall assured members of the Committee and the public that he did not and would not participate in any map-drawing outside of the public terminals and would not use any external materials:

- October 5, 2021 House Redistricting Committee, Tr. 61:16-62:2

Rep. Hawkins: “And this is just, you know, full transparency, Mr. Chairman, so that the public can know that we’re, you know, working with all cards up. Is there, you know, any – I want to make sure that there have been no maps drawn outside of this building that any of us have been privy to. Can we say that unequivocally that that’s been the case?”

Rep. Hall: “I can’t speak for other members of this committee. What I’ll say is that I have not contributed to the drawing of any map, at all.”

- October 5, 2021 House Redistricting Committee, Tr. 64:15-65:5

Rep. Reives: “But I guess first following up on Representative Hawkins’ question, and again, it’s just the question we’ve got to ask. He asked if there have been any maps drawn outside this building. I would like to know if there have been any maps drawn inside the building?”

Rep. Hall: “No. Great lawyer question. But no.”

Rep. Reives: “Just making sure. I got to ask.”

Rep. Hall: “You know, again, I’m speaking for myself, as the gentleman understands. I can’t speak for what other members have done, on either side of the aisle, or in the Senate, but I have not participated inside or outside of the drawing of maps, for this session.”

- October 5, 2021 House Redistricting Committee, Tr. 69:11-13

Rep. Hall: “But what I can tell members of this committee, as the chair, I won’t be bringing any maps in here to draw off of.”

- October 5, 2021 House Redistricting Committee, 70:4-6

Rep. Hall: “...look folks, the map you draw has got to be the one that you do in here and nowhere else.”

- November 1, 2021 House Redistricting Committee Rep Hall, Tr. 7:13-23:

“We’ve embarked on the most transparent redistricting process in North Carolina history, and there is simply no debate that can be had about that. Every part of this map-making process was done in public, and it was recorded, it was archived for anyone who would like to see it. Not only was it the most transparent process, but for the first time in North Carolina history, the legislature adopted a process on our own, on our own volition, that did not include the use of political data.”

Ex. D (Excerpts from 10/5/21 & 11/1/21 Joint Committee Meeting Tr.).

Legislative Defendants repeatedly patted themselves on the back for conducting a fully transparent process, while Representative Hall was holding private meetings using concept maps that were never made publicly available, and then were ostensibly lost or destroyed.

Second, as described above and as this Court has already explained, Legislative Defendants had a duty to preserve and to disclose the concept maps as public records. Destroying this information not just in the face of impending litigation, but in violation of North Carolina statute, casts further doubt on the notion that this was an innocent mistake.

Third, the sequence of events during discovery establishes that Legislative Defendants tried to avoid their discovery obligations regarding the concept maps. Legislative Defendants refused

to disclose the existence of the concept maps, until Representative Hall mentioned using them in his deposition. After his admission, Legislative Defendants identified for the first time a number of third parties who participated in drawing maps and whose participation was not publicly known. This is in direct contradiction to their assertion to Plaintiffs and to this Court that all the information sought by Plaintiffs was “publicly available.” Their discovery responses were vague and contained a glaring contradiction. They asserted that “they “cannot speak for ... the ... third parties identified above,” such as Mr. Reel and Mr. Inman, but then also asserted that “Mr. Reel did not use any racial or political data in preparing these concept maps.” *Id.* When pressed to produce the concept maps, the Legislative Defendants unconvincingly argued they were not in their possession or control. And when this Court issued another Order making clear Legislative Defendants’ obligation to produce the concept maps, the Legislative Defendants submitted two sets of supplemental responses and objections to *Harper* Plaintiffs’ discovery, contending that Representative Hall only contacted Mr. Reel “*after* the Court’s order on December 29, 2021 and Mr. Reel stated that the concept maps that were created were not saved, are currently lost, and no longer exist.” Ex. A at 4 (emphasis added).

Fourth, even when compelled by this Court’s order, Legislative Defendants *still* have refused to provide even the most basic information about these relevant materials—suggesting an intent to withhold inculpatory details about the missing files. Again, this Court required Legislative Defendants to produce the files or, if missing, to describe them “with specificity.” Legislative Defendants’ single-sentence response flies in the face of that directive, failing to provide even the most basic details about the missing files or where they might have gone. *Supra* pp. 6-7. Indeed, based on their discovery responses, it appears that Legislative Defendants did not

make any effort to search for and produce the concept maps beyond simply asking Mr. Reel if he still had them.

C. Legislative Defendants Should Also Be Precluded From Introducing Evidence or Testimony to Contradict the Adverse Inference Drawn Against Them.

For much the same reasons warranting an adverse inference, Legislative Defendants should be precluded from introducing testimony or evidence at trial that they did not consider partisan or racial data during the map-drawing process. The evidence of Legislative Defendants’ cover-up, demonstrates that Legislative Defendants not only made repeated misrepresentations to the public during the redistricting hearings, but also made misrepresentations to Plaintiffs and this Court that all relevant materials were publically available. They attempted to skirt their discovery obligations at every step of the way even after Plaintiffs learned about the concept maps, by stating that they did not have possession or control of the concept maps and refusing to provide any level of specificity about how they were destroyed. Given the extent of Legislative Defendants’ improper actions, this evidence justifies additional sanctions by the Court to level the evidentiary playing field, to remedy the prejudice caused to Plaintiffs, and to serve as future deterrent for the improper conduct by Legislative Defendants. *See Vodusek*, 71 F.3d at 156.

Numerous cases support the imposition of evidence preclusion as a sanction in these circumstances. *See, e.g., GE Betz, Inc. v. Conrad*, 231 N.C. App. 214, 238, 752 S.E.2d 634 (2013) (affirming evidence preclusion when the “the record is rife with [defendant’s] efforts to evade [plaintiff’s] requests for evidence . . . , including contravention of three separate orders to compel”); *Deans v. Terry*, No. COA04-495, 2005 N.C. App. LEXIS 425, at *12 (N.C. Ct. App. Mar. 1, 2005) (affirming evidence preclusion when “[t]he record exhibits a longstanding pattern of disobedient conduct and numerous incidents of defendant’s failure to comply with discovery requests”); *Khaja v. Husna*, 243 N.C. App. 330, 348, 777 S.E.2d 781, 791 (2015)

(affirming trial court’s ultimate sanction which bars her from presenting certain evidence); *Rabb v. Amatex Corp.*, 769 F.2d 996, 1000 (4th Cir. 1985) (observing that “[a] trial court may preclude evidence...even if to do so is tantamount to a...dismissal” (citations omitted)).

D. Legislative Defendants’ Destruction of Key Evidence Justifies Additional Sanctions.

The sanctions Plaintiffs have requested are independently warranted under North Carolina Rule of Civil Procedure 37(b)(2). That rule provides that “if a party fails to obey an order ” compelling the production of discovery under Rule 37(a), then the Court may order that “the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.”

As explained, Legislative Defendants have failed to comply with this Court’s order, which directed them to produce this material and to identify any destroyed material “with specificity.” Legislative Defendants’ response suggests that they have failed to even search for, let alone produce, material that may still exist. In particular, Legislative Defendants’ responses entirely fail to mention images of these concept maps that undisputedly existed on Mr. Reel’s smartphone and were used during the redistricting process. *Harper* Plaintiffs specifically identified these images in their Motion to Compel that this Court granted, *see* Mot. Compel at 3, 5, 6, 8, and in an email sent to counsel following Representative Hall’s deposition, *see* Mot. Compel Ex. Legislative Defendants also refer only to the concept maps themselves, and fail to explain whether there is any additional information “related” to these maps—for example, data Mr. Reel consulted when creating them—which this Court expressly required be produced. Order on Mot. Compel 7.

As for the concept map files that apparently “were not saved,” Legislative Defendants provide no detail whatsoever, let alone the requisite “specificity.” Legislative Defendants do not

provide any information about, for example: (1) the devices on which the concept maps were created; (2) the devices on which files were stored; (3) who issued these devices; (4) their current custodian; (5) the software or web application used to create the concept maps; (6) whether election or racial data was available on that software or application; (7) whether the maps were deleted as opposed to never saved in the first place; (8) if deleted, when and why; (9) if never saved, why not. These are basic questions parties routinely answer when identifying evidence that has been lost or destroyed, which is why this Court demanded that Legislative Defendants provide it.

Plaintiffs therefore request, under Rule 37(b)(2)(a), that this Court consider the following facts established:

1. Between his multiple sessions drawing the enacted House map at an official public computer terminal in the official map-drawing room, Representative Hall met privately, in secret, with his General Counsel Dylan Reel and others for “strategy sessions” where they developed and considered “concept maps” for multiple House county groupings.
2. The creator of these concept maps considered election data and racial data in doing so.
3. All written and electronic records of these strategy sessions—including all copies of the concept maps and all data and information relating to those maps, including any election or racial data contained therein—were lost or destroyed in violation of North Carolina law explicitly deeming such materials to be official legislative records.
4. Representative Hall’s “strategy sessions” to develop and consider “concept maps” with Mr. Reel and others violated the official criteria adopted by the Redistricting Committees, and were contrary to Representative Hall’s representations to the Redistricting Committee he chaired regarding the purported transparency of the map-drawing process.

Plaintiffs also request that the Court prohibit Legislative Defendants from introducing testimony or evidence at trial that Legislative Defendants did not consider partisan or racial data during the map-drawing process. Rule 37(b)(2)(b) permits this Court to “refus[e] to allow the disobedient party to support or oppose designated claims or defenses, or to “prohibit[] the party

from introducing designated matters in evidence.” And courts frequently preclude introduction of evidence in similar circumstances. *Supra*, p. 16.

Finally, Plaintiffs request any other sanctions that the Court deems appropriate in its discretion and inherent authority to manage this litigation.

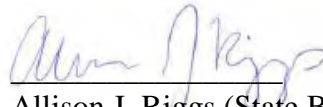
Respectfully submitted, this the 31st day of December, 2021.

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Lalitha D. Madduri*
Jacob D. Shelly*
Graham W. White
ELIAS LAW GROUP LLP
10 G. Street NE, Suite 600
Washington, D.C. 20002
MElias@elias.law
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law

Abha Khanna*
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
AKhanna@elias.law

Elisabeth S. Theodore
R. Stanton Jones*
Samuel F. Callahan
ARNOLD AND PORTER KAYE SCHOLER LLP



Allison J. Riggs (State Bar No. 40028)
allison@southerncoalition.org
Hilary H. Klein (State Bar No. 53711)
hilaryhklein@scsj.org
Mitchell Brown (State Bar No. 56122)
Mitchellbrown@scsj.org
Katelin Kaiser (State Bar No. 56799)
Katelin@scsj.org
Jeffrey Loperfido (State Bar No. 52939)
jeffloperfido@scsj.org

SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
Telephone: 919-323-3909
Facsimile: 919-323-3942

J. Tom Boer* (D.C. Bar No. 469585;
CA Bar. No. 199563)
tom.boer@hoganlovells.com
Olivia T. Molodanof* (CA Bar No.
328554)
olivia.molodanof@hoganlovells.com
* Admitted *Pro Hac Vice*

HOGAN LOVELLS US LLP
3 Embarcadero Center, Suite 1500
San Francisco, California 94111
Telephone: 415-374-2300
Facsimile: 415-374-2499

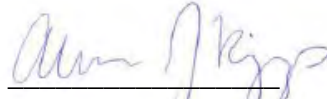
601 Massachusetts Avenue NW
Washington, DC 20001
elisabeth.theodore@arnoldporter.com

Counsel for Plaintiff Common Cause

Counsel for Plaintiffs Rebecca Harper, et al.
* *Pro Hac Vice* Motion pending

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served copy of the foregoing document by email, addressed to counsel for all other parties.

A handwritten signature in blue ink, appearing to read "Allison J. Riggs", is positioned above a horizontal line.

Allison J. Riggs (State Bar No. 40028)
allison@southerncoalition.org

EXHIBIT A

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426
21 CVS 500085

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

REBECCA HARPER, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

**LEGISLATIVE DEFENDANTS’ SUPPLEMENTAL OBJECTIONS AND
RESPONSES TO PLAINTIFFS’ SECOND SET OF INTERROGATORIES**

Defendants Representative Destin Hall, Senator Ralph E. Hise, Jr., Speaker of the North Carolina House Timothy R. Moore, and President Pro Tem of the North Carolina Senate, Philip E. Berger, Senator Warren Daniel, and Senator Paul Newton (“Defendants”), by and through undersigned counsel, serve their objections and responses to Plaintiffs’ Second Set of Interrogatories as follows:

GENERAL OBJECTIONS

Defendants make the following answers, responses, and objections to Plaintiffs’ Second Set of Interrogatories (“Interrogatories”). Each of the following responses is made subject to any and all objections as to competence, relevance, or other grounds that would require exclusion of such statement if made by a witness present and testifying in court. Any and all such objections and grounds are expressly reserved and may be interposed at the time of trial.

The responses are based on Defendants’ present knowledge, information, and belief, as derived from (a) the knowledge and information of present employees or agents of Defendants gained in their capacity as such and (b) a review of the documents and materials maintained by Defendants that would be likely to contain the information called for by the Interrogatories. These responses are subject to amendment and supplementation as Defendants acquire additional information and complete their review and analysis and made without prejudice to Defendants’ right to use subsequently discovered or developed information. Defendants state that their responses to the Interrogatories were prepared in consultation with their attorneys and may not exactly match the words or phrases that may be used by individuals in the course of this litigation to describe events, policies, and practices discussed herein.

No incidental or implied admissions are intended by these responses. The fact that Defendants respond or object to any Interrogatory should not be taken as an admission that Defendants accept or admit the existence of any facts assumed by such Interrogatory or that such Response or objection constitutes admissible evidence as to any such assumed facts. The fact that Defendants respond to part of or all of any Interrogatory is not intended to be, and shall not be, construed as, a waiver by Defendants of any part of any objection to any Interrogatory.

Defendants will respond to Plaintiffs’ Document requests in accordance with Rules 26 and 33 of the North Carolina Rules of Civil Procedure and will not provide responses or documents to the extent such responses or production would exceed the requirements of those Rules. Defendants only respond to these discovery requests with information or documents in their possession, custody or control.

Since the North Carolina Rules of Civil Procedure prohibit discovery of privileged matters, Defendants have attempted to interpret each Document Request to call for discoverable matter only. To the extent any response or produced document contains or refers to matters otherwise protected from discovery by the work product doctrine, the attorney-client privilege, or the legislative privilege, no waiver is intended; nor is any waiver intended as to any other matters that are or may be subject to such protection or otherwise privileged.

These responses are provided solely for the purpose of and in relation to this action

Supplemental Responses and Objections to Specific Interrogatories

2. Identify, by 5 p.m. pm December 23, 2021, all documents or data relied upon or otherwise considered by any Legislative Defendant or by any person identified in response to Interrogatory No. 1 above in connection with the creation of the 2021 Plans, including but not limited to draft redistricting plans (whether partial or complete), analysis of or relating to the 2021 Plans or drafts thereof, election or other partisan data, racial data, or any other data.

Supplemental Response: By way of further response, Defendants clarify that the “third parties” they reference covers only Dr. Mattingly and individuals who spoke at public hearings. “[A]ll documents or data relied upon or otherwise considered by any” of these third parties “in connection with the creation of the 2021 Plans,” as defined in the Interrogatory, clearly is not within the knowledge, custody or control of Defendants. As

a further response, Defendant Hall states that after the Court's order of December 29, 2021, he called Dylan Reel and Mr. Reel stated that the concept maps that were created were not saved, are currently lost and no longer exist.

While Defendants do not believe any further data or clarification is warranted or covered by the Court's order, out of an abundance of caution, Defendants are producing additional documents, including documents that can be found publicly on the North Carolina Redistricting Website contemporaneously with this response. Defendants refer Plaintiffs to their Amended Response to RFP 1 for a full accounting of these documents.

Submitted, this the 30th day of December, 2021.

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com
Thomas A. Farr (NC Bar No. 10871)
tom.farr@nelsonmullins.com
Alyssa M. Riggins (NC Bar No. 52366)
alyssa.riggins@nelsonmullins.com
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 329-3800

BAKER HOSTETLER LLP
Mark E. Braden* (DC Bar No. 419915)
MBraden@bakerlaw.com
Katherine McKnight* (VA Bar No. 81482)
kmcknight@bakerlaw.com
1050 Connecticut Ave NW, Suite 1100 Washington
DC 20036
* Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

It is hereby certified that on this the 30th day of December, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com
*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
*Counsel for the North Carolina State Board
of Elections; Damon Circosta, Stella
Anderson, Jeff Carmon III, Stacy Eggers IV,
and Tommy Tucker, in their official
capacities with the State Board of Elections*

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
Mitchellbrown@scsj.org
Katelin@scsj.org

J. Tom Boer
Olivia T. Molodanof
Hogan Lovells US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com
Counsel for Intervenor Common Cause

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

21 CVS 015426

21 CVS 500085

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

REBECCA HARPER, et al.,

Plaintiffs,

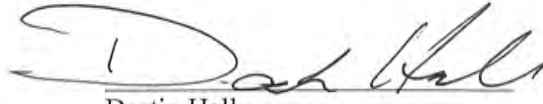
vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.


The undersigned declares, under penalty of perjury, that he has read the foregoing Defendants' Supplemental Responses to Plaintiffs' Second Set of Interrogatories, and that he knows the contents thereof; that the answers separately and fully answer each request except to the extent Defendants have raised objection; that he is acting in his capacity as an agent for Defendants in responding to these interrogatories; that the answers were prepared with the advice and assistance of counsel, on which he relied; that the answers are limited to records and information still in existence, presently recollected and currently available; consequently, the undersigned reserves the right to supplement the answers if it appears that errors have been made or more accurate information is available; subject to the limitations set forth, the answers are true and correct to the best of the undersigned's knowledge, information and belief.

Executed on 30 December, 2021


Destin Hall

Sworn or affirmed before me and subscribed in the presence the 30 day of December, 2021, in the state of NC and County of Caldwell.




Notary Public

38032865.1

EXHIBIT B

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426
21 CVS 500085

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

REBECCA HARPER, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

**LEGISLATIVE DEFENDANTS’ SUPPLEMENTAL OBJECTIONS AND
RESPONSES TO PLAINTIFFS’ SECOND SET OF RFP’S**

Defendants Representative Destin Hall, Senator Ralph E. Hise, Jr., Speaker of the North Carolina House Timothy R. Moore, and President Pro Tem of the North Carolina Senate, Philip E. Berger, Senator Warren Daniel, and Senator Paul Newton (“Defendants”), by and through undersigned counsel, serve their objections and responses to Plaintiffs’ Second Requests for Production of Documents as follows:

GENERAL OBJECTIONS

Defendants make the following answers, responses, and objections to Plaintiffs' Second Requests for Production of Documents ("Document Requests"). Each of the following responses is made subject to any and all objections as to competence, relevance, or other grounds that would require exclusion of such statement if made by a witness present and testifying in court. Any and all such objections and grounds are expressly reserved and may be interposed at the time of the trial.

The responses are based on Defendants' present knowledge, information, and belief, as derived from (a) the knowledge and information of present employees or agents of Defendants gained in their capacity as such and (b) a review of the documents and materials maintained by Defendants that would be likely to contain the information called for by the Document Requests. These responses are subject to amendment and supplementation as Defendants acquire additional information and completes their review and analysis and made without prejudice to Defendants' right to use subsequently discovered or developed information. Defendants state that their responses to the Document Requests were prepared in consultation with their attorneys and may not exactly match the words or phrases that may be used by individuals in the course of this litigation to describe events, policies, and practices discussed herein.

No incidental or implied admissions are intended by these responses. The fact that Defendants respond or object to any Document Request should not be taken as an admission that Defendants accept or admit the existence of any facts assumed by such Document Request or that such Response or objection constitutes admissible evidence as to any such assumed

facts. The fact that Defendants respond to part of or all of any Document Request is not intended to be, and shall not be, construed as, a waiver by Defendants of any part of any objection to any Document Request.

Defendants will respond to Plaintiffs' Document requests in accordance with Rules 26 and 34 of the North Carolina Rules of Civil Procedure and will not provide responses or documents to the extent such responses or production would exceed the requirements of those Rules. Defendants further object that under the North Carolina Rules of Civil Procedure, these requests are premature, as no discovery is permitted until a Rule 26(f) conference has been conducted. Defendants only respond to these discovery requests with information or documents in their possession, custody or control.

Since the North Carolina Rules of Civil Procedure prohibit discovery of privileged matters, Defendants have attempted to interpret each Document Request to call for discoverable matter only. To the extent any response or produced document contains or refers to matters otherwise protected from discovery by the work product doctrine, the attorney-client privilege, or the legislative privilege, no waiver is intended; nor is any waiver intended as to any other matters that are or may be subject to such protection or otherwise privileged.

These responses are provided solely for the purpose of and in relation to this action.

Supplemental Objections and Responses to Specific Requests

1. Produce, by 5 p.m. on December 23, 2021, all documents and data identified in your response to *Harper* Plaintiffs' Interrogatory No. 2 to Legislative Defendants, served on December 21, 2021.

Supplemental Response: By way of further response, Defendants state that based upon their good faith interpretation of the Court’s December 29, 2021 Order, Defendants must supplement all responses at issue in Plaintiffs’ motion. Given that Plaintiffs’ motion was primarily to compel information regarding “concept maps” Defendants refer Plaintiffs’ to supplemental interrogatory responses served with these responses. While Defendants do not believe any further data or clarification is warranted or covered by the Court’s order, out of an abundance of caution, Defendants direct Plaintiffs to files and data produced contemporaneously with this response. Specifically, Defendants are producing documents as they were kept in the ordinary course of business and as found on the North Carolina Redistricting Website as follows¹:

- All meeting minutes, documents, and member submitted maps and accompanying data of the Senate Standing Committee on Redistricting and Elections are contained in a zip folder called “Senate Standing Committee on Redistricting and Elections.”
- All meeting minutes, documents, and member submitted maps and accompanying data of the House Standing on Redistricting are contained in a zip folder called “House Redistricting Standing Committee”.
- All shapefiles, pdf maps, and accompanying reports found for the 2021 Enacted Plans are contained in a zip folder called “Final Plan Maps Reports and Shape Files”
- Dr. Persily’s Special Master Report and accompanying data in *Covington v. North Carolina*, is contained in a zip folder called “Special Master’s Report”

¹ Dr. Mattingly’s groupings are included in the respective Committee materials where they were relied upon.

Defendants are also producing the 2021 Redistricting Public Comments Reports. These can be found in a zip file called “Public Comments.”

Defendants are further producing maptitude files created while the House and Senate Redistricting committees were engaged in drawing plans following the return of the 2020 federal decennial Census for the drawing done by the House in Room 643 and the Senate in Room 544. The files are sorted by type plan and include the following:

- **In the folder ‘ --- 21 Plans’ folder, you will find Maptitude plans.**
- **In the ‘---21 Products’ folder, you will find the folders associated with a plan where a member requested a print out of map or reports. Reports were generated using a software developed by the General Assembly, and saved in the products folder.**
- **In the ‘overlays’ folder, you will find the geographic overlays, such as colleges, State and federal lands, member residency layers.**
- **In the ‘reference’ folder, you will find reminder instructions for staff on how to do a certain process, like how to create a PDF of a district plan map.**

Submitted, this the 30th day of December, 2021.

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com
Thomas A. Farr (NC Bar No. 10871)
tom.farr@nelsonmullins.com
Alyssa M. Riggins (NC Bar No. 52366)
alyssa.riggins@nelsonmullins.com

4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 329-3800

BAKER HOSTETLER LLP
Mark E. Braden* (DC Bar No. 419915)
MBraden@bakerlaw.com
Katherine McKnight* (VA Bar No. 81482)
kmcknight@bakerlaw.com
1050 Connecticut Ave NW, Suite 1100 Washington
DC 20036
* Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

It is hereby certified that on this the 30th day of December, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com
*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
*Counsel for the North Carolina State Board
of Elections; Damon Circosta, Stella
Anderson, Jeff Carmon III, Stacy Eggers IV,
and Tommy Tucker, in their official
capacities with the State Board of Elections*

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

Sam Hirsch
Jessica Ring Amunson
Kali Bracey
Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
Mitchellbrown@scsj.org
Katelin@scsj.org

J. Tom Boer
Olivia T. Molodanof
Hogan Lovells US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com
Counsel for Intervenor Common Cause

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com

EXHIBIT C

NORTH CAROLINA GENERAL ASSEMBLY

JOINT COMMITTEE MEETING

AUGUST 12, 2021

Transcribed by:

Denise Myers Byrd, CSR 8340, RPR

Discovery Court Reporters and

Legal Videographers, LLC

4208 Six Forks Road

Suite 1000

Raleigh, North Carolina 27609

(919) 424-8242

denise@discoverydepo.com

1 otherwise, those -- those items are not ranked
2 at all.

3 Members, the data -- as most members of
4 the committee know, the data will be released by
5 the Census Bureau today at about 1:00 p.m., as
6 best we can tell, and so it is the goal of the
7 chairs of this committee to adopt this criteria
8 this morning. And one of the reasons for that
9 is as we all understand, the redistricting
10 process is a very litigious process, not just in
11 North Carolina but really across the country,
12 and because of that, the chairs think it's
13 important to get criteria adopted before the
14 data comes out so that no one can reasonably say
15 that the chairs somehow took the data and then
16 drew the criteria to meet the desires of the
17 chairs. It would be impossible for the chairs
18 to have done that. The chairs have, obviously,
19 put out criteria already. The committees will
20 vote on whether to amend that criteria this
21 morning or not, but it was important before that
22 criteria came out -- before the data came out to
23 get the proposed criteria out.

24 Members, I'll go ahead and tell you, I
25 expect at some point next week to have a

EXHIBIT D

TRANSCRIPTION OF AUDIO FILE
NORTH CAROLINA HOUSE COMMITTEE
ON REDISTRICTING
OCTOBER 5, 2021

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

1 sure what we can do with the technology, but we are
2 absolutely happy to look into what our options are,
3 and report that back to the chair.

4 REPRESENTATIVE HAWKINS: Okay. I also
5 heard you were Erika Churchill, and you can do all
6 things, but just putting that out there.

7 MS. CHURCHILL: Speaking French is not one
8 of those things.

9 REPRESENTATIVE HAWKINS: Okay. 10-4. Just
10 --

11 CHAIRMAN HALL: I believe she said not yet.

12 REPRESENTATIVE HAWKINS: Follow up,
13 Mr. Chairman.

14 VICE CHAIR SAINÉ: You're recognized for a
15 follow-up.

16 REPRESENTATIVE HAWKINS: And this is just,
17 you know, full transparency, Mr. Chairman, so that
18 the public can know that we're, you know, working
19 with all cards up. Is there, you know, any -- I
20 want to make sure that there have been no maps drawn
21 outside of this building that any of us have been
22 privy to. Can we say that unequivocally that that's
23 been the case?

24 CHAIRMAN HALL: I can't speak for other
25 members of this committee. What I'll say is that I

1 have not contributed to the drawing of any map, at
2 all.

3 REPRESENTATIVE HAWKINS: Awesome. Thank
4 you, Mr. Chair.

5 VICE CHAIR SAINÉ: Thank you.
6 Representative Warren.

7 REPRESENTATIVE WARREN: Thank you. I
8 propose this to the Chair, but probably going to
9 deflect it to Ms. Churchill. Can you explain what
10 the matrix is on page 2 of this stack of maps?

11 VICE CHAIR SAINÉ: Ms. Churchill.

12 REPRESENTATIVE WARREN: I knew it. She can
13 do anything.

14 CHAIRMAN HALL: When we're using the word
15 "matrix," generally I'm going to go ahead and
16 deflect that one on over.

17 MS. CHURCHILL: So, Representative Warren,
18 I'm not sure that it is a matrix in the form that
19 many people think of when you say that word. But it
20 was our attempt to keep up with how the group from
21 Duke was allocating the options to create the eight
22 different combinations for a fully assigned
23 statewide map.

24 So when you see the A1 option in the Duke
25 House 01 through 04, that is associated with the

1 REPRESENTATIVE REIVES: All right. Thank
2 you.

3 I wanted to make sure, and I apologize if
4 this is repeating anything, I don't know that I have
5 the answer in my head, and I know that when we walk
6 out of this room, that I'm going to get all these
7 questions, so I'm trying to kind of figure out where
8 we are.

9 So on the drawing of the maps, I think my
10 big question is -- and I've got to get my glasses
11 back on because I had to type this because I can't
12 see, and I can't read anymore. See what you guys
13 did to me in 10 months. I had 2020 vision when I
14 got here.

15 But I guess first following up on
16 Representative Hawkins' question, and again, it's
17 just the question we've got to ask. He asked if
18 there have been any maps drawn outside this
19 building. I would like to know if there have been
20 any maps drawn inside the building?

21 CHAIRMAN HALL: No. Great lawyer question.
22 But no.

23 REPRESENTATIVE REIVES: Just making sure.
24 I got to ask.

25 CHAIRMAN HALL: You know, again, I'm

1 speaking for myself, as the gentleman understands.
2 I can't speak for what other members have done, on
3 either side of the aisle, or in the Senate, but I
4 have not participated inside or outside of the
5 drawing of any maps, for this session.

6 REPRESENTATIVE REIVES: That's good. I
7 appreciate that. And going on that same issue, and
8 you really, you and I have talked, and now I want to
9 say publicly, you have been very good about keeping
10 me up to date with what we're trying to do, how
11 we're trying to do it, and I appreciate that. And
12 we had this discussions, but I want to kind of get
13 it clearer now.

14 So my concern is similar to Representative
15 Harrison's concern because here seems to be the
16 problem that you run into. So let's say somebody --
17 and I'll use somebody who would never do this. I'm
18 going to use Representative Bell. So let's say
19 Representative Bell comes in and he's gone, and he's
20 talked to, you know, non-member Billy Richardson,
21 and Billy has said, "Oh, man. This would be a great
22 map for you, John Bell, because, you know, you put
23 all the democrats over here. You put all the
24 republicans here. And then you got you all the
25 black people here and the white people here, and all

1 And you might want to bring that very map
2 back in here, that you drew in this committee, and
3 sit down and, based on the changes -- the input,
4 rather -- the input you've got from other folks, and
5 make those changes. And I don't know how we would -
6 - again, I go back to the word policing it -- how I
7 -- I can't stand over somebody's shoulder and say,
8 "Now that's not the map you drew in here. That's a
9 map -- I don't know where that came from." I just
10 don't -- I don't think it's possible to do that.

11 But what I can tell the members of this
12 committee, as the chair, I won't be brining any maps
13 in here to draw off of. But I want to be clear that
14 when members of the public that are watching these
15 live video feeds, or members who are sitting in the
16 back, they're going to see members of this committee
17 walking around with maps in their hands. Some
18 people like to have a sheet of paper in front of
19 them. You know, you're probably like me. I like to
20 read, you know, a statue printed out, rather than
21 read it on a computer screen, so that I can write on
22 it, and think about it a little easier.

23 So, because of that, I'm afraid, you know,
24 even if we tried to do that, the optics of removing
25 members from this committee, and people seeing

1 people walking around with maps that have been
2 printed out because they were drawn in here, I think
3 it ultimately results in the best path forward to
4 just say, you know, look folks, the map you draw has
5 got to be the one that you do in here and nowhere
6 else. And that's up to the members and their
7 integrity as to how they want to handle that.

8 REPRESENTATIVE REIVES: And I would say
9 then, based on that, I'm assuming we will be
10 instructing members that you are not to use racial
11 or partisan data in the drawing of the maps that you
12 do in here.

13 CHAIRMAN HALL: Absolutely.

14 REPRESENTATIVE REIVES: And I would also, I
15 guess, say that once we're down to the maps that
16 we're going to be voting on, I mean, I would think
17 that's something that we can ask members when
18 they're presenting a map. You know, if a member
19 comes up and says, "This is my map we're voting on,"
20 you could say, "Okay. You didn't use racial or
21 partisan data," and that won't be considered out of
22 line.

23 CHAIRMAN HALL: I think that's, you know, a
24 fair question for any member of this committee or
25 anyone in the House to ask those very questions.

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE REDISTRICTING COMMITTEE

NOVEMBER 1, 2021

Transcribed by:

Denise Myers Byrd, CSR 8340, RPR

Discovery Court Reporters and

Legal Videographers, LLC

4208 Six Forks Road

Suite 1000

Raleigh, North Carolina 27609

(919) 424-8242

denise@discoverydepo.com

1 Recognize the gentleman from Caldwell
2 county.

3 CHAIRMAN HALL: Thank you,
4 Mr. Chairman.

5 And, Members, now that the PCS as
6 amended is before the committee, I do want to
7 make some brief opening remarks because I think
8 that the process, as I've previously said
9 chairing this committee and in presenting, this
10 is a historic process in this body that has
11 never happened in the history of this state and
12 in the history of this General Assembly.

13 We've embarked on the most transparent
14 redistricting process in North Carolina history,
15 and there is simply no debate that can be had
16 about that. Every part of this map-making
17 process was done in public, and it was recorded,
18 it was archived for anyone who would like to see
19 it. Not only was it the most transparent
20 process, but for the first time in
21 North Carolina history, the legislature adopted
22 a process on our own, on our own volition, that
23 did not include the use of political data.

24 Further, we received an immense amount
25 of public input on the maps which has resulted

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

REBECCA HARPER, et al.,

Plaintiffs,

vs.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

Consolidated with
21 CVS 500085

**LEGISLATIVE DEFENDANTS’ RESPONSE IN OPPOSITION TO PLAINTIFFS’
JOINT MOTION FOR DISCOVERY SANCTIONS**

NOW COME President *Pro Tempore* Philip E. Berger, Senator Warren Daniel, Senator Ralph E. Hise, Senator Paul Newton, Speaker Timothy K. Moore, and Representative Destin Hall (collectively, “Legislative Defendants”), by and through undersigned counsel, and hereby respond in opposition to *Common Cause* and *Harper* Plaintiffs’ Joint Motion for Discovery Sanctions (“Joint Motion”) as follows:

INTRODUCTION

Plaintiffs, without conferring with Legislative Defendants seek drastic and unwarranted relief on a premature record and through misrepresenting the record evidence. Plaintiffs are not entitled to redefine the burden of proof and establish findings of fact regarding legislative intent across multiple Committees and multiple Enacted Plans on the possibility of a negative inference. Even where applicable, North Carolina law at best permits a negative inference for spoliation of

evidence that a factfinder can accept or reject. Plaintiffs’ request, on the other hand, asks the Court to shift the burden of proof at trial, prevent evidence from being introduced, and conclusively establish certain facts before the Court weighs anything. While couched as a discovery motion, this motion is more focused on trial evidence and should be heard at trial. Legislative Defendants respectfully request to be heard on this issue at trial and that the Court defer its consideration of the motion until then.

BACKGROUND

Common Cause and *Harper* Plaintiffs’ Joint Motion distorts the factual and procedural history underlying Plaintiffs’ push for extreme and unwarranted relief from this Court.

Legislative Defendants were served with the interrogatories and requests for production underlying this Motion on December 21, 2021. Legislative Defendants never refused to respond, as Plaintiffs now allege. Rather, Legislative Defendants merely stated that they had no obligation under North Carolina law or order of this Court to respond within two days, which was the timeline demanded by *Harper* Plaintiffs, given their failure to seek leave of the court for an expedited response deadline under the N.C. Rules of Civil Procedure. *Harper* Plaintiffs filed a Motion to Compel.

On December 27, 2021, the Court, *on its own motion*, ordered Legislative Defendants to respond to *Harper* Plaintiffs’ discovery requests by 9:00 a.m. the following morning. Immediately following issuance of the Court’s Order, Legislative Defendants began, consistent with their good faith understanding of the Order, to provide as complete of a response to *Harper* Plaintiffs’ discovery requests as possible within the approximately 15 hours they had to do so. Notably, contrary to *Harper* Plaintiffs’ repeated suggestions that Legislative Defendants withheld information, this new, Court-issued deadline was the first time in the litigation that Legislative

Defendants had any obligation to *Harper* Plaintiffs to respond to discovery requests regarding concept maps.¹

Consistent with his deposition testimony, at the time of the Court’s Order, Representative Hall had no personal or actual knowledge about the status or location of the concept maps beyond what he had testified about in his deposition. Thus, Representative Hall promptly called Mr. Reel to inquire about the concept maps following the Court’s Order. As Plaintiffs concede in their Motion, Dylan Reel is no longer an employee of the North Carolina General Assembly, or even of the State of North Carolina. Accordingly, Legislative Defendants had no authority to demand his response to questions or (assuming the time to do so) to perform forensic discovery on his personal smartphone or other computing devices. On the call, Mr. Reel stated that he had not saved the concept maps that he had created and that that they were lost and no longer existed. Accordingly, Legislative Defendants included a statement in their supplemental discovery responses reflecting Mr. Reel’s representation about the current status of the concept maps, namely, that Representative Hall “called Dylan Reel and Mr. Reel stated that the concept maps that were created were not saved, and currently lost and no longer exist.”

Legislative Defendants served their discovery responses by 9:00 a.m. on Thursday, December 30, 2021. All that day, and all the next morning, the last two days of discovery, Plaintiffs made no attempt to approach counsel about any perceived deficiencies, no effort to ask the questions now raised for the first time in their Motion at pages 6-7, and no known effort to subpoena, or otherwise contact, Mr. Reel said about the concept maps—nothing. Rather than attempt to resolve or narrow the dispute, *Harper* Plaintiffs spent their time drafting a hyperbolic and extraordinary motion fit for the press. Wholly failing to acknowledge the extreme time and

¹ Under the N.C. Rules of Civil Procedure, without an order expediting discovery, Legislative Defendants’ response to the *Harper* Plaintiffs’ requests was due by January 20, 2022. N.C. R. Civ. P. 33(a).

resource constraints facing the parties, Plaintiffs waited to file this extraordinary motion amidst numerous other pre-trial filing obligations on a state holiday.

That said, Plaintiffs’ Joint Motion is generally correct on one thing: the very limited extent of Representative Hall’s reliance on the concept maps at issue in its Motion. Representative Hall testified that he may have somewhat relied on concept maps for possibly only five county clusters. Rough Transcript of Rep. Hall Deposition (“Rep. Hall Tr.”) at 125:1-129:21.

ARGUMENT

I. Legislative Defendants complied with the Court’s December 29, 2021 Order.

This Court’s December 29, 2021 Order (“December 29 Order”) required Representative Hall to “request and obtain the information, documents, and data from his former staffer on demand.” In compliance with the December 29 Order, Representative Hall called Mr. Reel immediately to request production of the concept maps. Mr. Reel represented to Representative Hall that “that the concept maps that were created were not saved, are currently lost and no longer exist.” *See* Joint Motion, Ex. A at 4. The December 29 Order did not require Representative Hall to cross-examine Mr. Reel, especially with regards to his personal smartphone that was not provided or paid for by the General Assembly. *Cf.* Joint Motion, p 6–7.

Upon learning this information, Legislative Defendants served supplemental discovery responses, as ordered by the court, reflecting the same. *See id.* Legislative Defendants also timely produced many documents, beyond what is already in the public record, on December 30, 2020 with less than a 24-hour turn-around time. This included electronic copies of almost the entirety of the documents relevant to the enactment of the 2021 Plans maintained on the General Assembly’s website, the Maptitude files created on the public terminals while the House and Senate Redistricting committees were engaged in drawing plans following the return of the federal

decennial Census in House Room 643 and Senate Room 544, and reports containing the public comments submitted to the General Assembly through its online portal.

Plaintiffs argue that Legislative Defendants failed to comply with the third paragraph of the December 29 Order, requiring “Legislative Defendants [to] identify the lost or destroyed material with specificity.” However, as previously stated in Legislative Defendants’ original interrogatory responses, Legislative Defendants are not in possession of the “concept maps.” The best description of the “concept maps” that Legislative Defendants could provide is the deposition testimony of Representative Hall—which was under oath and provided for over an hour of testimony as to the concept maps. See, e.g., Hall Tr. 116:15-159:6. Representative Hall did not copy the maps and only referred to them to consider options for how to draw complicated areas of the map in the compressed timeframe.² Further, Representative Hall is the *only* Legislative Defendant to look at the “concept maps.” Legislative Defendants complied with the December 29 Order, especially to the extent possible under the expedited case schedule. For these and the reasons set forth below, sanctions are unwarranted under Rule 37(b)(2) of the North Carolina Rules of Civil Procedure.

II. Legislative Defendants did not engage in spoliation.

² Hall Tr. 116:15-23; 120:22-122:3; 122:14-123:15 (“Well, I think generally, but I, you know, what I did was essentially, you know, we would have, I would talk to staff about, you know, whatever grouping we were going to work on and, you know, if it was one that was going to be difficult or, you know, we were just running out of time, they would maybe work on, again, a concept, and but I, you know, it wasn’t that I, you know, went in and just simply copied, you know, whatever could be September they had. You know, I just generally had in mind, you know, where the towns were and where the population might be in a given grouping, gave me some frame of reference to work off of and I, I think for anybody who’s ever sat down and used the Maptitude software they’ll understand that it is really difficult to go in in some of these groupings and just sit down and just draw from scratch without any sort of plan in place, and what can happen is you can easily sort of just get the map get the districts so jumbled up that they’re not exact they’re splitting municipalities and, you know, you’re trying to obviously create the ideal population size. So it is a, it’s a time-consuming process and especially when you’re wanting to do it right and follow the criteria that we put forth.”); 148:11-18 (“it wasn’t something that I was going to go in and copy. It was just a general idea of what districts may look like.”).

To establish a prima facie case of spoliation, a party must show that the spoliator (1) intentionally destroyed or failed to preserve; (2) potentially relevant materials; (3) while aware of the possibility of future litigation. *Arndt v. First Union Nat'l Bank*, 170, N.C. App. 518, 528, 613 S.E.2d 274, 281 (2005). An independent state law ground for preservation is not an element of the spoliation standard.³

Plaintiffs attempt to argue that litigation is always anticipated in redistricting claims. Joint Motion, p 9. However, redistricting is not, without more, done in anticipation of litigation. *Baldus v. Brennan*, No. 11-CV-1011 JPS-DPW, 2011 WL 6385645, at *2 (E.D. Wis. Dec. 20, 2011). And on this record there is certainly no evidence that anyone, much less Representative Hall or any other Legislative Defendants, intentionally destroyed or knowingly failed to preserve potentially relevant materials.

III. Even if there was a loss, Plaintiffs were not prejudiced and an adverse inference is not warranted.

Whether or not to impose sanctions for party discovery is within the discretion of the factfinder. *See McLain v. Taco Bell Corp.*, 137 N.C. App. 179, 185, 527 S.E.2d 712, 716 (2000) “[B]efore the Court sanctions a party for discovery abuses related to ESI, it should consider the severity of the discovery abuse or failure and the prejudice, if any, suffered by the requesting party.” *Tumlin v. Tuggle Duggins P.A.*, 2018 NCBC 49, 2018 WL 2327022, at *11 (N.C. Super. Ct. 2018). The “adverse interest” sanction applies “when the spoliator was on notice of the claim or potential claim at the time of destruction.” *McLain*, 137 N.C. App. at 187, 527 S.E.2d 712. The burden is on Plaintiffs to show that Legislative Defendants were on notice of the claim at the time

³ To the extent that Plaintiffs allege violations of N.C.G.S. 132-2, there is not enough information in the record for the Court to conclude that the concept maps were a public record. If as Plaintiffs suggest the maps were never saved then it is not clear they would have “become public records upon the act establishing the relevant district plan becoming law.” N.C.G.S. § 120-133. And other than the fact that Mr. Reel told Rep. Hall the maps were not saved and don’t exist, there is literally no evidence in the record as to what in fact happened to the maps.

the documents were destroyed. In North Carolina, “in order to qualify for the adverse inference, the party requesting it must ordinarily show that the ‘spoliator was on notice of the claim or potential claim at the time of the destruction.’” *McLain*, 137 N.C. App. at 187, 527 S.E.2d 712. *See also Raleigh Radiology LLC v. N.C. Dep’t of Health and Human Servs.*, 266 N.C. App. 504, 511, 833 S.E.2d 15 (2019).

No Legislative Defendant instructed Mr. Reel to destroy any public record. Further, Plaintiffs have ample testimony from Mr. Hall related to the concept maps, and could have sought information for the concept maps elsewhere or for any information about the concept maps that they think they lack.

IV. An adverse interest would, at best, affect five North Carolina House groupings.

When applicable, “spoliation of evidence gives rise to an inference as opposed to a presumption.” *McLain*, 137 N.C. App. at 188, 527 S.E.2d 712. As such, the adverse interest test “does not take the place of evidence of material facts and does not shift the burden of proof so as to relieve the party upon whom it rests of the necessity of establishing a prima facie case, although it may turn the scale when the evidence is closely balanced.” *Id.* Even if an adverse inference were appropriate, it would only apply to the House map and only for the groupings where Representative Hall testified that the concept maps may have been prepared. The Senate enacted map and what became the congressional map was drawn entirely separate from the House enacted map. It was drawn in a different legislative committee with different rules and procedures, in a different committee room, on different public terminals, on different days of the week and different times of the day. The Senate plan and the congressional plan were first presented to the Senate committee and first passed on the Senate floor before they were sent to the House for a vote. Under no circumstance does not the record developed by Plaintiffs warrant that such sanction against a

different plan. They have offered nothing to suggest it should, and evidence in the record expressly undermines that position. *See, e.g.*, Hise Depo. pp. 118:20 – 119:7 (Q: “Okay. Are you aware that Representative Hall and his staff were considering concept maps or template maps in drawing the House map, the State House map?” A: “I was not aware of that until someone told me that there's a consideration of that yesterday.” Q: “Okay. Did you ever discuss concept maps or anything like that with Representative Hall?” A: “No.” Q: “And you were not aware of any concept maps that were used by you or your staff during this entire process?” A: “That is correct.”).

CONCLUSION

WHEREFORE, for the reason set forth above, Legislative Defendants respectfully request this court deny Plaintiffs’ Joint Motion for Sanctions. Alternatively, Legislative Defendants request that the Court defer ruling on the motion until it can be heard at trial.

Respectfully submitted, this the 31st day of December, 2021.

/s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com
Thomas A. Farr (NC Bar No. 10871)
tom.farr@nelsonmullins.com
Alyssa M. Riggins (NC Bar No. 52366)
alyssa.riggins@nelsonmullins.com
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Telephone: (919) 329-3800

BAKER HOSTETLER LLP
Mark E. Braden* (DC Bar No. 419915)
MBraden@bakerlaw.com
Katherine McKnight* (VA Bar No. 81482)
kmcknight@bakerlaw.com
1050 Connecticut Ave NW, Suite 1100 Washington
DC 20036
* Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

It is hereby certified that on this the 31st day of December, 2021, the foregoing was served on the individuals below by email:

Burton Craige
Narendra K. Ghosh
Paul E. Smith
Patterson Harkavy LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com
Counsel for Plaintiffs Rebecca Harper, et al.

Abha Khanna
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
AKhanna@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Elisabeth S. Theodore
R. Stanton Jones
Samuel F. Callahan
Arnold and Porter
Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
Counsel for Plaintiffs Rebecca Harper, et al.

David J. Bradford
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
dbradford@jenner.com
Counsel for Plaintiffs North Carolina League of Conservation Voters, et al.

Sam Hirsch
Jessica Ring Amunson
Kali Bracey

Aria C. Branch
Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
Elias Law Group LLP
10 G Street NE, Suite 600
Washington, DC 20002
ABranch@elias.law
LMadduri@elias.law
JShelly@elias.law
GWhite@elias.law
Counsel for Plaintiffs Rebecca Harper, et al.

Terence Steed
Special Deputy Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
tsteed@ncdoj.gov
Counsel for the North Carolina State Board of Elections; Damon Circosta, Stella Anderson, Jeff Carmon III, Stacy Eggers IV, and Tommy Tucker, in their official capacities with the State Board of Elections

Stephen D. Feldman
Robinson, Bradshaw & Hinson, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
sfeldman@robinsonbradshaw.com
Counsel for Plaintiffs North Carolina League of Conservation Voters, et al.

Adam K. Doerr
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900

Zachary C. Schauf
Karthik P. Reddy
Urja Mittal
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
shirsch@jenner.com
zschauf@jenner.com

Charlotte, NC 28246
adoerr@robinsonbradshaw.com
Erik R. Zimmerman
Robinson, Bradshaw & Hinson, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
ezimmerman@robinsonbradshaw.com

*Counsel for Plaintiffs North Carolina League of
Conservation Voters, et al.*

*Counsel for Plaintiffs North Carolina
League of Conservation Voters, et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
Mitchellbrown@scsj.org
Katelin@scsj.org

J. Tom Boer
Olivia T. Molodanof
Hogan Lovells US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
olivia.molodanof@hoganlovells.com
Counsel for Intervenor Common Cause

s/ Phillip J. Strach

NELSON MULLINS RILEY &
SCARBOROUGH LLP
Phillip J. Strach (NC Bar No. 29456)
phillip.strach@nelsonmullins.com

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426, 21 CVS 500085

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, INC.;
HENRY M. MICHAUX, JR., et al.,

Plaintiffs,

REBECCA HARPER, et al.,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the House
Standing Committee on Redistricting, et al.,

Defendants.

**NCLCV PLAINTIFFS’ NOTICE
THAT ATTORNEY SAM HIRSCH
WILL NOT ACT AS AN
ADVOCATE AT TRIAL**

The NCLCV Plaintiffs hereby notify the Court and the parties that one of their litigation counsel of record, Mr. Sam Hirsch, will not act as an advocate in the courtroom at the trial scheduled for January 3 to 6, 2022. Mr. Hirsch will continue to act as counsel to the NCLCV Plaintiffs for activities outside the courtroom, consistent with the Rules of Professional Conduct.

On December 30, 2021, this Court granted the Legislative Defendants’ motion seeking to compel Mr. Hirsch’s appearance at a noticed deposition and, if called, at trial. Dec. 30, 2021 Order at 7. Pursuant to the Court’s Order, Mr. Hirsch appeared at a deposition on December 31, 2021, and responsively answered Legislative Defendants’ questions without waiving any applicable privileges.

The Court’s December 30 order also instructed Mr. Hirsch to analyze his role under Rule 3.7 of the North Carolina Rules of Professional Conduct. *Id.* at 8. After reviewing the facts and circumstances, Mr. Hirsch has elected not to act as an advocate in the courtroom at trial. Pursuant

to the Court’s instruction to evaluate this issue, and to ensure the record is clear, the NCLCV Plaintiffs provide the following explanation for this decision.

Rule 3.7 provides in full:

RULE 3.7. LAWYER AS WITNESS.

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer’s firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Following an evaluation of Rule 3.7 consistent with the process described in N.C. State Bar, 2011 Formal Ethics Opinion 1, “Lawyer as Advocate and Witness,” Apr. 22, 2011 [hereinafter 2011 Formal Ethics Opinion 1], the NCLCV Plaintiffs do not believe Mr. Hirsch is prohibited from acting as an advocate at trial because he is not a necessary witness at the upcoming trial and his absence could work substantial hardship on his clients. Mr. Hirsch’s testimony is not relevant, and even if relevant, is obtainable by other means, to the extent it is not covered by attorney-client privilege or work-product immunity or both. There is also a risk that the NCLCV Plaintiffs could suffer substantial hardship by losing as their courtroom advocate the attorney whom they selected to put on their sole witness at trial and to cross-examine other parties’ expert witnesses.

The NCLCV Plaintiffs respectfully submit that the Legislative Defendants’ identification of Mr. Hirsch as a witness in this case, so as to raise questions under Rule 3.7 regarding Mr. Hirsch’s role as trial counsel, is an “abuse of the rule by an opponent as a litigation tactic,” and reserve all objections thereto for purposes of appeal. 2011 Formal Ethics Opinion 1. It does not

serve the core purpose of Rule 3.7 for Mr. Hirsch to refrain from acting as an advocate at trial. As the Court noted, quoting a Formal Ethics Opinion issued by the North Carolina State Bar, “the ‘underlying reason for [Rule 3.7’s] prohibition [is to avoid] confusion of the trier of fact relative to the lawyers’ role.’” Order at 8 (quoting 2011 Formal Ethics Opinion 1); *see also* 2011 Formal Ethics Opinion 1 (“Rule 3.7 prohibits a lawyer from serving as both an advocate and a witness in a trial to eliminate the confusion that may result for the trier of fact when a lawyer serves in both roles.”). Here, the trier of fact is not a jury, but rather three distinguished Superior Court Judges who surely would not be confused by Mr. Hirsch’s roles as both a witness, called only by Legislative Defendants, and an advocate for the NCLCV Plaintiffs at trial.

Notwithstanding these determinations, Mr. Hirsch and the NCLCV Plaintiffs recognize that this Court has ordered that the Legislative Defendants may call Mr. Hirsch as a witness at trial. As a consequence, both to ensure full compliance with this Court’s December 30, 2021 ruling permitting Legislative Defendants to call Mr. Hirsch as a trial witness, and to avoid any further distraction from the merits of this important case at trial, Mr. Hirsch hereby notifies the Court and the parties that he will not act as an advocate in the courtroom at the upcoming trial.

Dated: January 1, 2022

Respectfully submitted,

JENNER & BLOCK LLP

Sam Hirsch*
Jessica Ring Amunson*
Kali Bracey*
Zachary C. Schauf*
Karthik P. Reddy*
Urja Mittal*
JENNER & BLOCK LLP
1099 New York Avenue NW, Suite 900
Washington, D.C. 20001
(202) 639-6000
shirsch@jenner.com
zschauf@jenner.com

David Bradford*
JENNER & BLOCK LLP
353 North Clark Street
Chicago, IL 60654
(312) 923-2975
dbradford@jenner.com

* *Admitted pro hac vice*

ROBINSON, BRADSHAW & HINSON, P.A.

/s/ Stephen D. Feldman

Stephen D. Feldman
North Carolina Bar No. 34940
ROBINSON, BRADSHAW & HINSON, P.A.
434 Fayetteville Street, Suite 1600
Raleigh, NC 27601
(919) 239-2600
sfeldman@robinsonbradshaw.com

Adam K. Doerr
North Carolina Bar No. 37807
ROBINSON, BRADSHAW & HINSON, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
(704) 377-2536
adoerr@robinsonbradshaw.com

Erik R. Zimmerman
North Carolina Bar No. 50247
ROBINSON, BRADSHAW & HINSON, P.A.
1450 Raleigh Road, Suite 100
Chapel Hill, NC 27517
(919) 328-8800
ezimmerman@robinsonbradshaw.com

Counsel for the NCLCV Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon each of the parties to this action by electronic mail to counsel at the e-mail addresses indicated below, in accordance with North Carolina Rule of Civil Procedure 5(b)(1)(a):

Burton Craige
Narendra K. Ghosh
Paul E. Smith
PATTERSON HARKAVY LLP
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
bcraig@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Lalitha D. Madduri
Jacob D. Shelly
Graham W. White
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, DC 20002
lmadduri@elias.law
jshelly@elias.law
gwhite@elias.law

Abha Khanna
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
akhanna@elias.law

Elisabeth S. Theodore
R. Stanton Jones
John Cella
Samuel F. Callahan
ARNOLD AND PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue NW
Washington, DC 20001-3743
elisabeth.theodore@arnoldporter.com
john.cella@arnoldporter.com
stanton.jones@arnoldporter.com
samuel.callahan@arnoldporter.com

Phillip J. Strach
Thomas A. Farr
Gregory P. McGuire
D. Martin Warf
John E. Branch III
Alyssa M. Riggins
Nathaniel J. Pencook
NELSON MULLINS RILEY & SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
phillip.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
greg.mcguire@nelsonmullins.com
martin.warf@nelsonmullins.com
john.branch@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
nate.pencook@nelsonmullins.com

Mark E. Braden
Katherine McKnight
Patrick T. Lewis
Sean Sandoloski
Richard Raile
BAKER HOSTETLER LLP
1050 Connecticut Avenue NW,
Suite 1100
Washington, DC 20036
mbraden@bakerlaw.com
kmcknight@bakerlaw.com
plewis@bakerlaw.com
ssandoloski@bakerlaw.com
rraile@bakerlaw.com

Counsel for Plaintiffs Representative Destin Hall, Senator Warren Daniel, Senator Ralph E. Hise, Jr., Senator Paul Newton, Representative Timothy K. Moore, and Senator Phillip E. Berger

*Counsel for Plaintiffs Rebecca Harper,
et al.*

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
Jeffrey Loperfido
SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryhklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org
jeffloperfido@scsj.org

J. Tom Boer
Olivia T. Molodanof
HOGAN LOVELLS US LLP
3 Embarcadero Center, Suite 1500
San Francisco, CA 94111
tom.boer@hoganlovells.com
oliviamolodanof@hoganlovells.com

Counsel for Plaintiff Common Cause

This 1st day of January, 2022.

Terence Steed
Stephanie Brennan
Amar Majmundar
N.C. DEPARTMENT OF JUSTICE
Post Office Box 629
Raleigh, NC 27502-0629
tsteed@ncdoj.gov
sbrennan@ncdoj.gov
amajmundar@ncdoj.gov

*Counsel for Defendants the North Carolina
State Board of Elections, Damon Circosta,
Stella Anderson, Jeff Carmon III, Stacy Eggers
IV, Tommy Tucker, Karen Brinson Bell; and the
State of North Carolina*

/s/ Stephen D. Feldman
Stephen D. Feldman