**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF NORTH CAROLINA**

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| SHAUNA WILLIAMS, et al.,<br><br>*Plaintiffs*,<br><br>v.<br><br>REPRESENTATIVE HUGH BLACKWELL, in his official capacity as Chair of the House Standing Committee on Elections, et al.,<br><br>*Defendants*. | Civil Action No. 23 CV 1057 |
| NORTH CAROLINA STATE CONFERENCE OF THE NAACP, et al.,<br><br>*Plaintiffs*,<br><br>v.<br><br>PHILIP BERGER, in his official capacity as the President Pro Tempore of the North Carolina Senate, et al.,<br><br>*Defendants.* | Civil Action No. 23 CV 1104 |

***WILLIAMS* PLAINTIFFS' RESPONSE IN OPPOSITION TO LEGISLATIVE DEFENDANTS' MOTION TO DISMISS COUNTS III AND IV OF THEIR SUPPLEMENTAL COMPLAINT**

## INTRODUCTION

Legislative Defendants' ("Defendants") Motion to Dismiss addresses two counts of *Williams* Plaintiffs' Supplemental Complaint ("Suppl. Compl.") (Oct. 31, 2025), ECF No. 181—the malapportionment claim in Count III, and the claim premised on the impermissible pursuit of partisan advantage and consideration of race in Count IV. The issues raised by both counts are straightforward. First, Article I, § 2 of the U.S. Constitution requires States to "draw congressional districts with populations as close to perfect equality as possible," *Evenwel v. Abbott*, 578 U.S. 54, 59 (2016), or otherwise "justify population differences between districts that could have been avoided by a 'good-faith effort to achieve absolute equality,'" *Tennant v. Jefferson Cnty. Comm'n*, 567 U.S. 758, 759 (2012) (per curiam) (quoting *Karcher v. Daggett*, 462 U.S. 725, 730 (1983)). North Carolina has made no effort, good-faith or otherwise, to achieve numerical equality among congressional districts in the 2025 Plan. While Defendants claim that the new congressional districts have equal populations based on the 2020 census, it is now 2025, and North Carolina's population has shifted considerably. Defendants cannot rely on the legal fiction that census data remains current throughout the decade because that fiction exists to *avoid* the need for constant redistricting, not to *enable* the type of voluntary, mid-decade redraw North Carolina pursues here. Any other conclusion could conceivably allow States to enact districts every two years that are intentionally malapportioned based on current populations—all in an effort to empower a select group of voters over others.

Second, the First and Fourteenth Amendments generally prohibit States from discriminating on the basis of voters' political persuasions, *Williams v. Rhodes*, 393 U.S.

23, 30-31 (1968), and require racial classifications to satisfy strict scrutiny, *see Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995). Any leeway that courts have granted States to consider race and pursue partisan advantage when required to redistrict falls away entirely when they engage in voluntary mid-cycle redistricting for the sole purpose of pursuing racial and partisan objectives, as the General Assembly did here. Absent that leeway, the General Assembly's unnecessary and unjustified consideration of race and professed pursuit of partisan advantage in enacting the 2025 Plan violates the First and Fourteenth Amendments.

Because Plaintiffs have pleaded sufficient facts to state their malapportionment and First and Fourteenth Amendment claims, the Court should deny Defendants' motion to dismiss Counts III and IV of Plaintiffs' Supplemental Complaint.

## BACKGROUND

The General Assembly fulfilled its decennial obligation to redraw its congressional districts in 2021 when it reapportioned North Carolina's congressional districts after the 2020 census, and when it redistricted in 2023 to replace a court-ordered map ("2022 Plan") with a legislatively enacted plan ("2023 Plan"). Suppl. Compl. ¶¶ 51, 66.

On October 13, 2025, in response to urging by President Donald Trump, Republicans in the General Assembly announced that they would redraw North Carolina's congressional map, specifically targeting CD-1—a district that has long encompassed North Carolina's Black Belt counties and has elected a Black North Carolinian to Congress since 1992. *Id.* ¶¶ 74, 76. On October 22, just two days after the plan was introduced, the General Assembly enacted Senate Bill 249 ("2025 Plan"). *Id.* ¶ 75. In devising the 2025

Plan, the General Assembly relied on 2020 census data, making no effort to equalize congressional district populations in light of uneven post-census population growth. *Id.* ¶¶ 162-65. Because the 2025 Plan is based on five-year-old census data, it places many North Carolinians in overpopulated congressional districts where their votes are diluted relative to their neighbors in other, underpopulated congressional districts. *Id.* ¶ 169.

The chief architect of the 2025 Plan, Senator Ralph Hise, admitted that he was "aware that district 1 has a higher minority population than the state average." *Id.* ¶ 83. The General Assembly dismantled that historically Black district by extracting Black communities and counties with significant Black populations in former CD-1 and reassigning them to CD-3. *Id.* ¶¶ 95-102.

## LEGAL STANDARD

Because Defendants do not challenge any particular jurisdictional allegation in Plaintiffs' Supplemental Complaint, the "facts alleged in the complaint are taken as true, and the motion must be denied if the complaint alleges sufficient facts to invoke subject matter jurisdiction." *Kerns v. United States*, 585 F.3d 187, 192 (4th Cir. 2009). Even if Defendants challenged jurisdictional facts, "a presumption of truthfulness should attach to the plaintiff's allegations" when the jurisdictional facts are "intertwined with the facts central to the merits." *Id.* at 193.

In deciding a 12(b)(6) motion, the court "must accept as true all of the factual allegations contained in the complaint" and "draw all reasonable inferences in favor of the plaintiff." *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 440 (4th Cir. 2011) (citations omitted). A motion to dismiss must be denied if the complaint provides

the grounds to plaintiffs' "entitlement to relief" with "more than labels and conclusions" and "raise[s] a reasonable expectation that discovery will reveal evidence" of the allegations. *U.S. Airline Pilots Ass'n v. Awappa, LLC*, 615 F.3d 312, 317 (4th Cir. 2010) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007)).

## ARGUMENT

### I. Plaintiffs adequately pleaded a malapportionment claim under Article I, § 2 of the U.S. Constitution.

#### A. Congressional districts must be equally apportioned, and the 2025 Plan's districts are not.

"The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote." *Gray v. Sanders*, 372 U.S. 368, 381 (1963). That principle requires that States "design both congressional and state-legislative districts with equal populations, and … regularly reapportion districts to prevent malapportionment." *Evenwel*, 578 U.S. at 58-59. Though federal courts once "resisted any role in overseeing the process by which States draw legislative districts," that hands-off approach let "pervasive malapportionment" in States' legislative and congressional districts go completely "unchecked." *Id.* at 58. As a result, many rural districts were left "significantly underpopulated"—and thus overrepresented—"in comparison with urban and suburban districts." *Id.* Addressing the pervasive problem of malapportionment, the Supreme Court held in *Baker v. Carr* that malapportionment claims were justiciable. 369 U.S. 186, 191-92 (1962). Two years later, the Court invalidated Georgia's congressional map, "under which the population of one congressional district was 'two to three times'

larger than the population of the others." *Evenwel*, 578 U.S. at 59 (quoting *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964)).

The Supreme Court has since interpreted Article I, § 2 of the U.S. Constitution to require States to "draw congressional districts with populations as close to perfect equality as possible," *id.*, an obligation demanding "a good-faith effort to achieve precise mathematical equality." *Kirkpatrick v. Preisler*, 394 U.S. 526, 530-31 (1969) (citing *Reynolds v. Sims*, 377 U.S. 533, 577 (1964)). The Court has set forth a two-prong test to determine whether a State's congressional plan meets this standard. "First, the parties challenging the plan bear the burden of proving the existence of population differences that 'could practicably be avoided.' If they do so, the burden shifts to the State to 'show with some specificity' that the population differences 'were necessary to achieve some legitimate state objective.'" *Tennant*, 567 U.S. at 760 (quoting *Karcher*, 462 U.S. at 734).

The 2025 Plan fails at both steps.

**1.** The existence of population differences in the 2025 Plan is beyond dispute. North Carolina's population grew by 605,000 between the 2020 census and 2024. Suppl. Compl. ¶ 163. This population growth has been uneven across the State. Between July 2022 and 2023, for example, twenty-six counties had higher population growth rates than North Carolina as a whole. *Id.* ¶ 164. From 2023 to 2024, the population in one of North Carolina's fastest growing counties increased by 4.54%, while another county's population decreased by 1.18%. *Id.* ¶ 165. Despite these shifts in population, in drawing the 2025 Plan,

the General Assembly reshuffled voters based on five-year-old census data, drawing districts with vastly unequal populations.[1] *Id.* ¶ 166.

The 2020 Census data, by definition, fails to account for population changes over the last five years. Decennial census data "only provides a snapshot of a dynamic demographic process." *Hancock Cnty. Bd. of Sup'rs v. Ruhr*, No. 1:10CV564 LG-RHW, 2013 WL 4483376, at *4 (S.D. Miss. Aug. 20, 2013). It "rapidly becomes outdated as people are born, die, and move." *Id.*; *see also Raiford v. Dillon*, 297 F. Supp. 1307, 1310 (S.D. Miss. 1969) ("[C]ensus records, while comprehensive, quickly become outdated."), *vacated*, 430 F.2d 949 (5th Cir. 1970). Accordingly, the 2025 Plan's congressional districts—drawn on the basis of five-year-old census data—do not have a "deviation of plus or minus one human being," Mem.18-19, based on present-day population. *Cf. Lewis v. Ascension Par. Sch. Bd.*, No. CV 08-193-C-M2, 2009 WL 10681443, at *11 (M.D. La. Aug. 5, 2009) (concluding it would "no longer be appropriate" to "us[e] outdated 2000 census figures" in 2009 reapportionment); *Simkins v. Gressette*, 495 F. Supp. 1075, 1082 (D.S.C. 1980) (raising "one man, one vote" concerns over relying on 1970 census data even before publication of 1980 census), *aff'd*, 631 F.2d 287 (4th Cir. 1980).

[1] Defendants' attempts to cast doubt on the population shifts in North Carolina since the 2020 census, *see, e.g.*, Legis. Defs.' Mem. in Supp. of Mot. to Dismiss ("Mem.") 22 (Nov. 4, 2025), ECF No. 193, may not appropriately be considered by the Court at this stage. The court "must accept as true all of the factual allegations contained in the complaint," *Kolon Indus., Inc.*, 637 F.3d at 440 (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)), and Plaintiffs have alleged extensive, uneven population growth in North Carolina since the 2020 census, resulting in malapportioned congressional districts. Suppl. Compl. ¶¶ 163-66.

There is no dispute that population differences in the 2025 Plan "could practicably be avoided." *Karcher*, 462 U.S. at 734. That is because North Carolina could have "avoided" drawing a new map altogether. It was certainly under no obligation to do so, as Defendants seem to concede, Mem.9.

Defendants do not dispute either the existence of population disparities in the five years since the 2020 census, or their own ability to avoid those disparities by refraining from enacting the 2025 Plan altogether. *See generally id.* at 18-22. Instead, relying on *Karcher*, they suggest that the most recently published decennial census data—regardless of how old it is—provides the General Assembly a safe harbor because the census is "the only basis for good-faith attempts to achieve population equality." Mem.19 (quoting *Karcher*, 462 U.S. at 738). That misunderstands both *Karcher* and Plaintiffs' claim. *Karcher* addressed a circumstance in which "the New Jersey Legislature was *required* to reapportion the State's congressional districts" based on the release of new decennial census data. 462 U.S. at 727 (emphasis added). In that context, the Court rejected the State's effort to call into question the accuracy of the census data to justify known population deviations, noting that the "adoption of fixed numerical standards which excuse population variances without regard to the circumstances of each particular case" are flatly "inconsistent" with "[t]he whole thrust of the 'as nearly as practicable' approach." *Id.* at 731 (quoting *Kirkpatrick*, 394 U.S. at 530). Here, by contrast, North Carolina was *not* required to redraw the State's congressional districts—not by release of new census data, or by court order, or by the need to replace a court-adopted plan. Defendants' attempt to "excuse" the undisputed population variances between 2020 and 2025 thus cannot be

squared with "the circumstances of [this] particular case." *Id.* In other words, while the 2020 census may well be "the only basis for good-faith attempts to achieve population equality," Mem.18-19, the voluntary redrawing of congressional districts in the 2025 Plan does not reflect such a good-faith attempt. Contrary to Defendants' suggestion, *Karcher* never held that a State is permitted to use, let alone that the Court "demand[s]" States to use, *id.* at 19, stale census data in undergoing unnecessary mid-decade redistricting.

**2.** Defendants do not argue that these avoidable population differences "were necessary to achieve some legitimate state objective." *Tennant*, 567 U.S. at 760 (quoting *Karcher*, 462 U.S. at 741). Indeed, North Carolina points to no legitimate state objective at all that requires the redrawing of congressional districts in 2025 based on 2020 census data. Contrary to Defendants' contention that the General Assembly "could exercise its legislative power even if it did not need to remedy a violation of federal law," Mem.9, the constitutional authority to enact congressional districts cannot be divorced from the constitutional restraint to do so based on populations that are "as close to perfect equality as possible." *Evenwel*, 578 U.S. at 59. Where the legal standard requires North Carolina to offer "with some specificity" a sufficient justification for its decision to deviate from population equality, *Karcher*, 462 U.S. at 741, it is flatly insufficient for North Carolina to point to its purported authority to draw maps in general.

In sum, where a legislature chooses to voluntarily replace the districts it previously enacted, it must do so within the well-established constitutional constraints for ensuring that district populations are "as close to perfect equality as possible." *Evenwel*, 578 U.S. at

59. North Carolina failed this standard by continuing to use the 2020 decennial census data five years after that census was taken without any justification for doing so.

### B. The *LULAC* plurality opinion's "legal fiction" cannot validate the 2025 Plan's malapportioned districts.

Contrary to Defendants' contention, Mem.18, the plurality opinion in *LULAC v. Perry*, which rejected apportionment challenges to a mid-decade plan that was passed to replace a court-ordered map, does not foreclose Plaintiffs' malapportionment claim here.

To start, Defendants are incorrect that the plurality in *LULAC* "rejected the argument that the accuracy of decennial census data could not be presumed" in a mid-decade redistricting. *Id.* at 20. Quite the opposite: the plurality did not question that the decennial census data was outdated but *excused* any resulting population variances by relying on a "legal fiction" that once a properly apportioned plan has been adopted, "even 10 years later, the plans are constitutionally apportioned." *LULAC v. Perry*, 548 U.S. 399, 421 (2006) (plurality op.) (quoting *Georgia v. Ashcroft*, 539 U.S. 461, 488 n.2 (2003)).[2] The plurality opinion in *LULAC* extended that legal fiction only to allow a state legislature that was unable draw a lawful plan after the decennial census to later replace a court-drawn remedial plan. 548 U.S. at 421-22; *see also id.* at 416 (holding that "a lawful, legislatively

[2] Defendants conflate the "presumed accuracy of census data" with the "legal fiction" of continual apportionment. Mem.20. The former typically applies when a party contests the census's accuracy *when taken*, or argues that a district's racial demographics have shifted post-census in such a distinct way as to affect a claim under Section 2 of the Voting Rights Act. *See, e.g.*, *United States v. Village of Port Chester*, 704 F. Supp. 2d 411, 439 (S.D.N.Y. 2010); *Johnson v. DeSoto Cnty. Bd. of Comm'rs*, 204 F.3d 1335, 1341 (11th Cir. 2000). The "legal fiction" of continual apportionment, however, accepts the unremarkable conclusion that the census becomes outdated throughout the decade but excuses malapportioned districts to "avoid constant redistricting." *LULAC*, 548 U.S. at 421.

enacted plan should be preferable to one drawn by the courts"). The Court therefore upheld the Texas Legislature's 2003 decision to replace that "court-drawn plan with one of its own design," even though doing so meant upholding a plan drawn based on census data that was, by then, several years old. *Id.* at 416, 420-23. The interest in adopting a legislatively enacted plan, the Court reasoned, justified the resulting population deviations. *See id.* at 421-22.

This case presents a fundamentally different situation: North Carolina already had a legislatively enacted plan—the plan it enacted in 2023. Unlike Texas in 2023, North Carolina in 2025 can point to no legitimate basis for its use of outdated data to redraw congressional districts. Nor can it take advantage of the "legal fiction" applied in *LULAC*. The purpose of the legal fiction that the decennial census still accurately accounts for a State's population years after the census is taken is "to *avoid* [the] constant redistricting" that would be necessary if districts had to be redrawn to equalize population before every election. *Id.* at 421 (emphasis added). Like any legal fiction, it exists to further "the administration of the law" where "required by the demands of convenience and justice." *Helvering v. Stockholms Enskilda Bank*, 293 U.S. 84, 92 (1934). Legal fictions, however, are not "woodenly appl[ied]" where doing so would "serve none of the purposes and goals" that justify it. *Cruz v. Chesapeake Shipping, Inc.*, 932 F.2d 218, 227-28 (3d Cir. 1991). To

further extend the legal fiction of continuing population equality to also cover voluntary revisions to legislatively enacted plans would turn its purpose on its head.[3]

Finally, Defendants suggest that "even if" the current districts are malapportioned, upholding the 2025 Plan is required to avoid "yet another reapportionment." Mem.22 (quoting *Abrams v. Johnson*, 521 U.S. 74, 100-01 (1997)). But Plaintiffs have not asked for a brand-new map as a remedy; they seek an injunction requiring the State to "continue to use the 2023 Plan," which was itself enacted to replace a court-ordered map, pending resolution of their previous claims. ECF No. 187 at 25. Reverting to the 2023 map is an appropriate, equitable remedy. *See League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 248 (4th Cir. 2014) (affirming the "revival of previous practices" as remedy in challenge to election rules). In the event Plaintiffs' claims as to the Piedmont Triad and Mecklenburg districts in the 2023 Plan are successful, only then will Defendants have any basis to enact a new congressional map, and then too only to remedy the identified violation.[4]

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[3] Defendants are incorrect that Justice Kennedy's analysis in Part II.D of *LULAC* provides the narrowest ground for judgment of the malapportionment claim. *See* Mem.21 n.6. Only two other Justices joined Justice Kennedy's discussion of that claim. While Justice Scalia's concurrence, joined by Justice Thomas, concluded that "claims of unconstitutional partisan gerrymandering do not present a justiciable case or controversy," *LULAC*, 548 U.S. at 511 (Scalia, J., concurring), that reasoning bore little relation to the malapportionment claim given that one-person, one-vote claims are plainly justiciable. *See Evenwel*, 578 U.S. at 59; *Wesberry*, 376 U.S. at 7-8. Further still, Plaintiffs' malapportionment claim is not premised on partisan considerations—making Justice Scalia's concurrence inapplicable here in any event.

[4] Though a legislature is typically afforded the first opportunity to adopt a remedial plan, "this rule is not without exception, such as when the timing of an upcoming election makes legislative action impractical." *Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs*,

In sum, Defendants can point to no legitimate basis—no court order and no precedent—that would justify the population deviations in the 2025 Plan.

## II. The General Assembly's consideration of race and partisanship in creating the 2025 Plan violates the First and Fourteenth Amendments.

### A. North Carolina's decision to undergo unnecessary mid-decade redistricting does not entitle it to pursue racial or partisan objectives.

Because North Carolina engaged in unnecessary mid-decade redistricting, it cannot consider race and partisanship in ways that might have been permitted when the State first drew its constitutionally required map after the 2020 census or when the General Assembly replaced a court-ordered map in 2023. Rather, when a State engages in unnecessary mid-decade redistricting unrelated to a court order, background constitutional principles apply: Any consideration of race violates the Fourteenth Amendment unless it passes muster under strict scrutiny, *see Adarand*, 515 U.S. at 227, and any pursuit of partisan advantage violates the First Amendment, *see Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983).

Generally, state decisionmaking based on the consideration of racial classifications or the intentional favoritism of voters based on their partisanship would run afoul of the First and Fourteenth Amendments. "[A]ll racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny" and are "constitutional only if they are narrowly tailored measures that

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996 F. Supp. 2d 1353, 1357 (N.D. Ga. 2014) (citing *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (plurality op.)). And during the process of drawing a remedial plan, the Court has the authority to restrict the General Assembly's authority to enact a map only as required by "'the clear commands' of federal law." *North Carolina v. Covington*, 585 U.S. 969, 979 (2018) (per curiam) (quoting *Burns v. Richardson*, 384 U.S. 73, 85 (1966)).

further compelling governmental interests." *Adarand*, 515 U.S. at 227. Similarly, "the First Amendment is plainly offended" when a legislature attempts to favor one particular viewpoint over another. *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 785-86 (1978); *see also Anderson*, 460 U.S. at 787 (finding a voting burden "that falls unequally on new or small political parties or on independent candidates impinges, by its very nature, on associational choices protected by the First Amendment," discriminating against those candidates and their voters); *Williams*, 393 U.S. at 30-31 (holding First Amendment protects "the right of qualified voters, regardless of their political persuasion, to cast their votes effectively"); *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 225 (1986) (finding statute unconstitutional for burdening the First Amendment rights of a political party).

The Supreme Court, however, has held that "redistricting differs from other kinds of state decisionmaking," *Shaw v. Reno*, 509 U.S. 630, 646 (1993), in part because "[w]hen the decennial census numbers are released, States *must* redistrict to account for any changes or shifts in population," *Ashcroft*, 539 U.S. at 489 n.2 (emphasis added). Accordingly, courts have modified these otherwise applicable First and Fourteenth Amendment principles in the context of mandatory redistricting following a decennial census or when a legislature is required to remedy a legal violation or exercise its right to replace a court-drawn plan.

In these circumstances, because of the "complex interplay of forces that enter a legislature's redistricting calculus," *Miller v. Johnson*, 515 U.S. 900, 915-16 (1995), States may "be aware of racial demographics," *id.* at 916, as long as such "race consciousness

does not lead inevitably to impermissible race discrimination," *Shaw*, 509 U.S. at 646. Similarly, the Court has concluded that States may pursue partisan advantage when they engage in mandatory decennial redistricting because "[p]olitics and political considerations are inseparable" from that necessary process. *Rucho v. Common Cause*, 588 U.S. 684, 700-01 (2019) (quoting *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973)). Determining whether a map goes "too far" in promoting partisan aims in the course of mandatory redistricting presents difficult—and therefore nonjusticiable—questions, and the Court has concluded that prohibiting the consideration of partisan goals may make it impossible for state legislatures to fulfill their constitutional obligation. *Id.* at 700-01, 714 (alteration omitted) (citation omitted) (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 296 (2004) (plurality op.)).

Here, however, the North Carolina General Assembly neither engaged in mandatory redistricting following a decennial census nor replaced a court-drawn plan.[5] Rather, it *chose* to undergo voluntary mid-decade redistricting, much like any other type of legislation which legislatures choose to enact of their own volition rather than pursuant to a constitutional obligation. *See Anderson*, 460 U.S. at 787 (striking down law requiring independent candidates to declare their candidacies before established political parties had chosen their candidates, which "limit[ed] the opportunities of independent-minded voters to associate in the electoral arena to enhance their political effectiveness as a group"); *Adarand*, 515 U.S. at 227 (applying strict scrutiny to Government's use of race-based

[5] If there were any doubt about whether the redistricting effort was necessary to cure a defect in the prior Plan, Senator Hise, the architect of the 2025 Plan, specifically explained in legislative hearings that the plan was not intended to remedy any legal violations. Suppl. Compl. ¶ 80.

presumptions in identifying socially and economically disadvantaged individuals). In this context, the 2025 Plan does not benefit from the relaxed standards applicable to mandatory decennial redistricting. Instead, the 2025 Plan must be adjudicated based on generally applicable prohibitions on the consideration of race or party in enacting legislation.

In enacting the 2025 Plan, the General Assembly considered race and dismantled a historically Black district that encompasses the Black Belt where Black voters have been able to elect their candidate of choice. Suppl. Compl. ¶¶ 95-102. The dismantling of the Black-opportunity district CD-1 was accomplished by extracting Black communities and counties with significant Black populations in former CD-1 and reassigning them to CD-3, thereby decreasing the BVAP of CD-1 by more than eight percentage points. *Id.* This distribution of Black voters is much greater than the change in partisan composition and also comes at the expense of traditional districting principles, including respect for communities of interest and political subdivision and geographical boundaries. *Id.* These stark racial effects—combined with North Carolina's well-documented history and ongoing record of discrimination against Black North Carolinians in redistricting and other voting practices and the substantive and procedural deviations—suggest that the General Assembly, at the very least, took race into account in enacting the 2025 Plan. And there is no dispute that the General Assembly considered party in drawing the 2025 Plan. *See* Legis. Defs.' Resp. in Opp'n to Pls.' Mots. for Prelim. Injs. ("PI Opp.") 9, 18 (Nov. 14, 2025), ECF No. 201 (explaining that "[p]olitics provided the but-for cause of the redistricting," "[p]olitical objectives also motivated the transfer of residents between districts," and "the stated political goal … presumptively was the actual basis of the redistricting choices");

*see also id.* at 10 ("Senator Hise considered 'election outcomes' when drawing" the 2025 Plan.).

**B. Defendants rely on inapposite authority.**

Defendants do not cite any authority addressing the specific circumstances at issue here; namely, a case in which a State engages in unnecessary mid-decade redistricting to achieve specific racial and partisan objectives.

Instead, Defendants broadly contend that the General Assembly is entitled to additional leeway in considering racial demographics in redistricting, but each case they cite illustrates an instance in which a state legislature was tasked with *mandatory* redistricting after a census. Mem.12; *see, e.g.*, *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 12 (2024) ("South Carolina had to redraw its map after the 2020 census because two of the State's seven districts saw major population shifts."); *Shaw*, 509 U.S. at 630 (North Carolina enacting a redistricting plan after the 1990 census); *Miller*, 515 U.S. at 900 (Georgia enacting a redistricting plan after the 1990 census and after obtaining preclearance).

When state legislatures—like the General Assembly in enacting the 2025 Plan—are not required to undergo post-census redistricting or enact a plan pursuant to a court order, but undertake voluntary mid-decade redistricting, their intentional consideration of race triggers strict scrutiny, which requires them to demonstrate that the consideration of race was narrowly tailored to further a compelling state interest. *Bush v. Vera*, 517 U.S. 952, 976 (1996) (plurality op.). The General Assembly's entirely voluntary and unnecessary mid-decade redistricting for the express purpose of unseating Representative Don Davis

from his historic Black opportunity district at the expense of Black voters, Suppl. Compl. ¶¶ 73, 76, 83-94, serves no compelling state interest and therefore fails to survive strict scrutiny.

Defendants misread the Supplemental Complaint when they assert that strict scrutiny does not apply because Plaintiffs' "Count IV does not allege" "intentional discrimination." Mem.12-13. Not so. Count IV expressly "re-allege[s] and incorporate[s] by reference all prior paragraphs of th[e] Complaint … as though fully set forth" in Count IV. Supp. Compl. ¶ 171. Those incorporated paragraphs include numerous allegations of intentional race discrimination. *See, e.g.*, *id.* ¶ 9 ("Plaintiffs therefore seek an order (i) declaring that the 2025 Plan *intentionally discriminates against minority voters* in violation of the Fourteenth and Fifteenth Amendments to the U.S. Constitution and Section 2 of the Voting Rights Act." (emphasis added)); *see also id.* ¶¶ 139-58.

Defendants' professed pursuit of partisan objectives fares no better. Defendants mistakenly assert that the claim rejected in *LULAC* was "[j]ust like" the claim Plaintiffs assert here. Mem.6. But the *LULAC* plaintiffs' claim differed in at least two key respects. First, the decision in *LULAC* rested on the right of state legislatures to "replace court-mandated remedial plans by enacting redistricting plans of their own." 548 U.S. at 416. When doing so, the Court held "no presumption of impropriety should attach to the legislative decision" because "to prefer a court-drawn plan to a legislature's replacement would be contrary to the ordinary and proper operation of the political process." *Id.* Second, the State in *LULAC* argued, and the Court agreed, that the "district lines were drawn based

on … mundane and local interests," and not "adopted solely for partisan motivations." *Id.* at 417-18.

Neither fact is true about the General Assembly's decision to enact the 2025 Plan. Unlike the State of Texas in *LULAC*, the General Assembly did not act out of its prerogative to replace a court-drawn plan. Rather, the plan it replaced was the 2023 Plan enacted by the General Assembly itself. Additionally, unlike in *LULAC*, Defendants themselves claim that partisan advantage in fact motivated their redistricting effort. Suppl. Compl. ¶ 85. Accordingly, *LULAC* does not control here.

Defendants next erroneously claim that the Court in *Rucho* rejected a "stronger" claim than Plaintiffs present, Mem.7-8, but *Rucho* also does not govern the specific circumstances at issue here. The decision in *Rucho*, in which the Supreme Court analyzed the decisions of state legislatures during mandatory decennial redistricting after the 2010 census, did not conclude that mid-decade redistricting conducted purely to advance partisan and racial objectives is nonjusticiable; the Supreme Court merely noted that it previously found in *LULAC* no justiciable standard for resolving the claims against Texas's mid-decade redistricting map, which was drawn to replace a court-ordered map. 588 U.S. at 703. *Rucho* provides no cover for blatant First and Fourteenth Amendment violations that are wholly unrelated to the legal necessities of constitutionally mandated decennial redistricting.

And while the Supreme Court in *Rucho* wrestled with the fundamental question of how to identify an unconstitutional partisan gerrymander based on the "difficulty in settling on a 'clear, manageable and politically neutral' test for fairness," *id.* at 706, the General

Assembly's highly unusual mid-decade redistricting presents entirely different circumstances. Here, the Court need not tease apart racial and partisan motives from the "complex interplay of forces that enter a legislature's redistricting calculus" in the course of mandatory redistricting, *Miller*, 515 U.S. at 915-16. The mere act of taking up the pen to redraw districts the General Assembly had already drawn two years prior in pursuit of racial and partisan objectives provides the "limited and precise standards that are clear, manageable, and politically neutral" that the Supreme Court was unable to find in *Rucho*. 588 U.S. at 707. In this context, it is entirely "clear what fairness"—and unfairness—"look[] like." *Id.* at 706.

## CONCLUSION

For the reasons provided above, the Court should deny Legislative Defendants' motion to dismiss Count III and IV in *Williams* Plaintiffs' Supplemental Complaint.

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* *Special Appearance pursuant to Local Rule 83.1(d)*

**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.3(d), I hereby certify that this brief contains 5,177 words as indicated Microsoft Word, excluding the caption, signature lines, certificate of service, cover page, and tables.

This the 18th day of November, 2025.

/s/ *Lalitha D. Madduri*
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**CERTIFICATE OF SERVICE**

On this 18th day of November, 2025, I electronically filed the foregoing using the Court's CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by that system.

/s/ *Lalitha D. Madduri*
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