

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

SHAUNA WILLIAMS, et al.,

Plaintiffs,

v.

REPRESENTATIVE HUGH BLACKWELL, in
his official capacity as Chair of the House
Standing Committee on Elections, et al.,

Defendants.

Civil Action No. 23 CV 1057

NORTH CAROLINA STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

PHILIP BERGER, in his official capacity as the
President Pro Tempore of the North Carolina
Senate, et al.,

Defendants.

Civil Action No. 23 CV 1104

***WILLIAMS* PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR
PRELIMINARY INJUNCTION**

INTRODUCTION

Legislative Defendants (“Defendants”) fail to rebut *Williams* Plaintiffs’ showing that preliminary injunctive relief is warranted and necessary. The evidence reveals that the General Assembly used S.B. 249 “to entrench itself” by “targeting voters who, based on race, were unlikely to vote for the majority party.” *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 233 (4th Cir. 2016). Even if “done for partisan ends,” because the General Assembly used Black voters as the means to achieve their partisan goal, “that constitute[s] racial discrimination.” *Id.*¹

ARGUMENT

I. Plaintiffs are likely to succeed on the merits of their claims.

A. Plaintiffs stated the correct legal standard.

Ignoring the Supreme Court’s clear directive that “[a] vote-dilution claim is ‘analytically distinct’ from a racial-gerrymandering claim and follows a ‘different analysis,’” *Alexander v. S.C. State Conf. of NAACP*, 602 U.S. 1, 38 (2024) (citation omitted), Defendants wrongly attempt to import *Alexander*’s racial gerrymandering standard here, *see* Opp.6. But to prove intentional vote dilution, Plaintiffs must simply show that discriminatory purpose was “a motivating factor,”—not the “sole” or “primary” purpose—and may make that showing with any available “circumstantial and direct

¹ Defendants offer almost no response to Plaintiffs’ malapportionment and First and Fourteenth Amendment claims, resting on their arguments in their Motion to Dismiss. Even if their attempt to incorporate their MTD arguments here were deemed proper and not waived, *see* Local Rule 7.3(d)(3), those arguments fail for reasons stated in Plaintiffs’ forthcoming opposition brief.

evidence of intent.” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-66 (1977). Defendants ignore that recent Supreme Court decisions have reaffirmed “the familiar approach outlined in *Arlington Heights*” to evaluate “the question of discriminatory intent,” *see, e.g., Brnovich v. DNC*, 594 U.S. 647, 687 (2021), and claim that the Court has blessed their targeting of Black voters to achieve partisan ends. Opp.9, 16. Not so: “targeting voters who, based on race, were unlikely to vote for the majority party,” *McCrory*, 831 F.3d at 233, constitutes impermissible racial discrimination.

Defendants also wrongly suggest that without direct evidence of discriminatory intent, a vote dilution claim must fail. Opp.16. But the Court has made clear that “discriminatory intent need not be proven by direct evidence,” *Rogers v. Lodge*, 458 U.S. 613, 618 (1982), and has “often acknowledged the utility of circumstantial evidence in discrimination cases,” *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99-100 (2003). For good reason: “Outright admissions of impermissible racial motivation are infrequent,” and “plaintiffs often must rely upon other evidence.” *Hunt v. Cromartie*, 526 U.S. 541, 553 (1999); *see also Mi Familia Vota v. Fontes*, 129 F.4th 691, 725 (9th Cir. 2025) (“direct evidence of legislators’ discriminatory purpose is [] rare,” and “circumstantial evidence [of discriminatory intent] may be ‘more certain, satisfying and persuasive than direct evidence’”) (quoting *Costa*, 539 U.S. at 100). Requiring direct evidence would “ignore the reality that neutral reasons can and do mask racial intent,” and “give legislatures free rein to racially discriminate so long as they do not overtly state discrimination as their purpose.” *Veasey v. Abbott*, 830 F.3d 216, 235 (5th Cir. 2016).

This case in particular is not one where “direct evidence” of discrimination is likely

to be “be smoked out,” Opp.7-8 (citing *Alexander*, 602 U.S. at 8), *e.g.*, through “scores of leaked emails from state officials instructing their mapmaker to pack as many black voters as possible into a district,” *Cooper v. Harris*, 581 U.S. 285, 318 (2017). Defendants made sure of that by repealing a longstanding law that made redistricting communications public and giving legislators the unilateral authority to delete their emails and destroy their records. Br.6 n.3. Moreover, during prior phases of this litigation, Defendants have shielded any possible direct evidence by asserting privilege over numerous redistricting documents relevant to the enactment of the 2023 Plan. Ex. 15.²

B. Plaintiffs are likely to demonstrate intentional vote dilution.

The *Arlington Heights* factors—largely undisputed by Defendants—support a finding that S.B. 249 was motivated by discriminatory intent. First, Defendants do not contest S.B. 249’s discriminatory impact: it nearly guarantees that Black voters in CD-1 and CD-3 will be unable to elect their preferred candidates by shifting tens of thousands of Black voters across district lines while keeping the BVAP in both districts low enough that Black voters form ineffective minorities in both districts. Br.7-12. This was achieved by decreasing the BVAP of CD-1 by 8 percentage points—which is *double* the decrease in Democratic voter share—a pattern that holds regardless of the data examined. *See* Opp.19-22; *see* Ex. 1 at 9-10. Nor do they contest that this change came at the expense of traditional redistricting principles, or that Black voters disproportionately reside in districts under S.B. 249 where they cannot elect their preferred candidates. Opp.19-22.

² Exhibits are attached to the First and Second Declarations of Lalitha D. Madduri.

Second, unable to contest Plaintiffs’ evidence of racially polarized voting or North Carolina’s history of voting-related discrimination, Defendants claim such evidence is irrelevant. *See* Opp.21. They are wrong on both counts. Racially polarized voting—which Defendants’ own expert confirms exists, *see* Alford Rep., Opp., Ex. 9 at 4-6—“provide[s] an incentive for intentional discrimination,” *McCrory*, 831 F.3d at 222, because a high degree of polarization “offers a political payoff for legislators who seek to dilute or limit the minority vote,” *Holmes v. Moore*, 840 S.E.2d 244, 258 (N.C. 2020) (quotation omitted). Indeed, as the Fourth Circuit and a former expert for the State recognized, *McCrory*, 831 F.3d at 225, and Senator Hise admitted at trial, ECF No. 166 ¶ 573, race is among the best predictors of voting behavior: Black North Carolinians vote more cohesively and consistently than white voters, Ex. 2 at 3, providing an obvious incentive to target Black voters to produce enduring gerrymanders.

Moreover, the Court has made clear that the “historical background of a legislative enactment is one evidentiary source relevant to the question of intent.” *Abbott v. Perez*, 585 U.S. 579, 603-04 (2018) (citation omitted); *see also United States v. Sanchez-Garcia*, 98 F.4th 90, 99 (4th Cir. 2024). Plaintiffs have presented recent, direct evidence of the General Assembly (and specifically Senator Hise) repeatedly using unlawful means to achieve their political goals in recent redistricting cycles. *See* Br.17-19. That includes considering partisanship even when doing so was unlawful, *see* Br.17, and improperly considering race. *See Cooper*, 581 U.S. at 300 (quoting trial testimony that legislative consultant was “instructed to draw [District 1] with a [BVAP] in excess of 50 percent”) (alterations in original)). That evidence “provides important context for determining

whether the same decisionmaking body—and here, the same decisionmaker, *see infra* § I.D —has also enacted a law with discriminatory purpose.” *McCrory*, 831 F.3d at 223-24.

Finally, Defendants do not dispute any of the substantive and procedural deviations in S.B. 249’s enactment. Instead, they acknowledge that the General Assembly avoided scrutiny at every turn and refused to implement the views expressed in public comments. Opp.20. They do not dispute that S.B. 249 set out to target the State’s oldest Black opportunity district, significantly departing from the last 150 years of congressional plans, nor do they dispute the extraordinary pace of the legislative process or the suppression of legislative debate so that the means and motivation behind the districting changes could not be investigated. Br.15-17. “[R]ush[ing] [a bill] through the legislative process” “strongly suggests an attempt to avoid in-depth scrutiny,” and supports an inference of discriminatory intent under *Arlington Heights*. *McCrory*, 831 F.3d at 228-29.

Defendants’ insistence that race could not have played a role because the Legislature professed that S.B. 249 was enacted to accomplish partisan goals ignores that “[t]he sorting of voters on the grounds of their race remains suspect even if race is meant to function as a proxy for other (including political) characteristics.” *Cooper*, 581 U.S. at 308 n.7. It also ignores that “[i]ntentions to achieve partisan gain and to racially discriminate are not mutually exclusive.” *Veasey*, 830 F.3d at 241 n.30.

C. Plaintiffs disentangled race from politics.

The requirement to disentangle race from politics, though relevant to racial gerrymandering claims, does not apply here. *Alexander*, 602 U.S. at 38 (“A vote-dilution claim is ‘analytically distinct’ from a racial-gerrymandering claim and follows a ‘different

analysis.”).³ But even if it did apply, Plaintiffs have sufficiently separated race from politics and shown that Defendants “use[d] race” to “advance[]their partisan interests.” *Cooper*, 581 U.S. at 308 n.7.

First, Dr. Rodden shows that the racial effects of S.B. 249 do not align with partisanship. Br.11. While CD-1’s Democratic vote share dropped only about 4 percentage points between the two plans, its BVAP fell by 8 points, *double* the drop in the percentage of Democratic voters. *Id.* Moreover, that disparity exists across *all* partisan groups—Democrats, Republicans, and unaffiliated voters; Black voters of *all* party affiliations were disproportionately moved out of CD-1 and into CD-3. *Id.* In the face of these statistics, Defendants have nothing but Dr. Barber’s unsubstantiated say-so that the observed racial differences must have resulted from partisan sorting. Opp.18. But both Dr. Rodden’s analysis of Dr. Barber’s original simulations and Dr. Rodden’s new responsive simulations show that S.B. 249’s extreme racial sorting was not necessary to achieve the General Assembly’s professed partisan goals. Ex. 17, Rodden Rebuttal Rep. at 15. The same is true of Dr. Rodden’s prior analysis of the General Assembly’s draft maps, which show partisan goals did not necessitate the unusually low BVAP in CD-1. *Id.* at 14-15. The fact “that [S.B. 249] bears more heavily on one race than another” supports an “infer[ence]” of “discriminatory purpose.” *Washington v. Davis*, 426 U.S. 229, 242 (1976).

None of Defendants’ remaining arguments meaningfully challenge Plaintiffs’

³ For the same reason, Defendants are wrong that Plaintiffs face an “adverse inference” because they have not produced an alternative map. Opp.16. That requirement is specific to the racial gerrymandering context. The Court has never imposed it in vote dilution cases.

evidence. They criticize Dr. Rodden’s analyses because he observed that the General Assembly treated Black voters differently in the 2023 Plan than in S.B. 249, Opp.17-18, but that observation reflects only the indisputable facts that the 2023 Plan did not dismantle CD-1 and held BVAP relatively steady as compared to the 2022 Plan, while S.B. 249 significantly reconfigured CD-1, dropping its BVAP by eight percentage points. They next question why Dr. Rodden did not conduct every prior analysis he performed for the 2023 Plan for S.B. 249. Opp.17. The answers are both simple and mundane. A single week passed between S.B. 249’s passage and Plaintiffs’ filing of their PI, giving limited time to prepare a report. Ex. 17 at 2, 4. But, even so, some of Dr. Rodden’s prior analyses were not suitable for the two-district focus of S.B. 249. *Id.* at 3, 10 (explaining the county envelope analysis is meaningful only where there are sufficient split counties to examine alternative VTD configurations and correcting Dr. Barber’s mischaracterization of prior regressions).⁴ Further, Defendants ignore several expert analyses that support Plaintiffs’ claims. For example, they do not dispute—or even acknowledge—that S.B. 249 performs worse than the prior plan on nearly every traditional redistricting criterion—including historic configurations, respect for incumbents, preserving cores of former districts, political subdivision splits, and respect for communities of interest. *See Karcher v. Daggett*, 462 U.S. 725, 740 (1983); *see also* Ex. 17 at 4-10 (further showing S.B. 249 performs worse than 2023 Plan on several traditional redistricting criteria and including racial dislocation

⁴ The Court has already seen Dr. Rodden testify credibly, consistently, and candidly at trial. Dr. Rodden has been forthcoming about how his various analyses can be informative to the Court as “piece[s] of the larger puzzle” rather than “a strict statistical test.” Tr.1464:21-1465:12. This is no less true of the analysis in his supplemental reports.

analyses demonstrating unnatural racial sorting).

Defendants next suggest that race could not have been a motivating factor in S.B. 249 because it did not move majority-Black counties, Opp.17-18, but they do not dispute that the Plan swaps *disproportionately* Black communities (counties with 30-40% BVAP) out of CD-1 into CD-3 in exchange for heavily white counties (with BVAP as low as 1.81%), Br.7-8, sufficient to dismantle Black opportunity in CD-1. That they could have shifted *even more* Black voters does not erase the targeted swaps S.B. 249 inflicted or its resulting discriminatory effect.

D. Plaintiffs rebutted the legislative presumption of good faith.

The presumption of good faith asks courts to put their thumb on the scale in favor of the legislature when “confronted with evidence that could plausibly support multiple conclusions.” *Alexander*, 602 U.S. at 10 (citing *Abbott*, 585 U.S. at 610-12). Courts have recently recognized that an effective demonstration of the *Arlington Heights* factors may “rebut[] the presumption of legislative good faith.” *Singleton v. Allen*, 782 F. Supp. 3d 1092, 1350 (N.D. Ala. 2025). And partisanship considerations alone do not explain the observed racial sorting in CDs 1 and 3. *Supra* § I.C.

Plaintiffs have also provided extensive evidence to question Senator Hise’s credibility, Br.17-19, and Defendants’ attempts to rehabilitate him are unavailing. Senator Hise’s insistence that he did not actively view racial data while configuring S.B. 249 does not, as Defendants allege, “defeat the allegations of racial motive,” Opp.8, both because “legislators rarely provide ... direct evidence of their invidious motives,” *Tenn. State Conf. of NAACP v. Lee*, 746 F. Supp. 3d 473, 503 (M.D. Tenn. 2024), and because the evidence

shows that Senator Hise has uniquely deep knowledge of racial demographics in North Carolina: He has drawn more than a half dozen maps, served in leadership roles in redistricting since 2017, and even helped draw a congressional map last census cycle that the Supreme Court affirmed targeted a 55% BVAP in CD-1. *Cooper*, 581 U.S. at 300. In other words, he has far more than “general knowledge,” Opp.11, of race in the Northeast, and did not need to actively view racial data to target Black voters.

Defendants’ revisionist history of past judicial findings of the General Assembly’s and Senator Hise’s lapses in credibility does not move the needle. Opp.12. In spite of Senator Hise’s insistence “several times under oath” that the General Assembly did not use partisan data in crafting the 2021 Plan, ECF No. 166 ¶ 460, the North Carolina Supreme Court concluded that “[t]he General Assembly ha[d] substantially diminished the voting power of voters affiliated with one party on the basis of partisanship” and had “done so intentionally.” *Id.* (quoting *Harper v. Hall*, 868 S.E.2d 499, 554 (N.C. 2022)). That decision does not “support[] Senator Hise’s attestation[],” Opp.12—it directly contradicts it. They next suggest that this finding can be ignored because it was a “state-court decision[]” that considered partisanship, not race. Opp.13. But it does not matter in which court he offered misleading testimony or the type of information about which he was “less than candid,” *id.* Further, Senator Hise’s misstatements continued into the 2025 legislative process when he denied having seen or reviewed any analysis of racially polarized voting in CD-1 in the 2025 or 2023 processes. *See id.* at 17-18.

Defendants’ attempts to explain away *Common Cause v. Lewis*, 2019 WL 4569584 (N.C. Super. Sep. 03, 2019), fare no better. While they claim the court accepted that the

General Assembly “did not use racial data in drawing [] districts” during the 2017 process, Opp.13, that decision actually found that “the un rebutted evidence established that Defendants,” including Senator Hise, “cracked African American voters in rural and semi-rural parts of the state where cracking Democratic voters would maximize Republican victories.” *Common Cause*, 2019 WL 4569584, at *102. And while Defendants “claimed ... that ... they did not use racial data in drawing the districts” and only “checked the racial demographics of the districts on the ‘back end’ to ensure that ‘the VRA was satisfied,” “the Court f[ound] th[at] assertion *not credible*.” *Id.* (emphases added). Far from supporting the General Assembly’s credibility, these prior decisions demonstrate “[a] historical pattern of laws producing discriminatory results” from “the same decisionmaking body” that drew and enacted S.B. 249. *McCrory*, 831 F.3d at 223-24.

These facts, compounded by the General Assembly’s insistence on shielding redistricting materials and by Plaintiffs’ demonstration of the *Arlington Heights* factors, overcome the presumption of good faith.

II. Plaintiffs are entitled to injunctive relief.

Misreading *Pierce v. North Carolina State Board of Elections*, Defendants contend that Plaintiffs seek a “disfavored” mandatory injunction. Opp.22 (citing 97 F.4th 194, 209 (4th Cir. 2024)). Not so—Plaintiffs seek a prohibitory injunction to “maintain the status quo and prevent irreparable harm.” *League of Women Voters of N.C. v. North Carolina* (“*LWV*”), 769 F.3d 224, 236 (4th Cir. 2014) (“[R]equir[ing] a party who has recently disturbed the status quo to reverse its actions ... restores, rather than disturbs, the status quo ante.”) (citations omitted). Plaintiffs sued immediately—not “a month” after the plan

was enacted—and their motion does not “seek to impose an entirely different map.” *Pierce*, 97 F.4th at 209-10; *see also LWV*, 769 F.3d at 236 (concluding that plaintiffs who filed suit immediately after bill’s enactment were “[w]ithout doubt” “seeking to maintain the status quo”). Plaintiffs seek only the continued use of the 2023 Map while the Court adjudicates their claims as to the Piedmont Triad and Mecklenburg districts.

Citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006), Defendants also take the untenable position that there is insufficient time for the Court to replace an illegal map with its direct predecessor in a non-election year. Opp.22. That is factually incorrect. The Court set a schedule that the State Board indicates provides enough time to implement a remedy. Further, applying *Purcell* here would create skewed incentives, insulating unlawful maps from judicial review whenever a state waits until the last minute to alter a map. No case supports such an outcome. *Merrill v. Milligan*, Opp.22, is not on point: there, the Supreme Court stayed an *election-year order* to “completely redraw[]” Alabama’s districts “within a few short weeks.” 142 S. Ct. 879 (2022) (Alito, J., concurring). Similarly, *Robinson v. Callais*, 144 S. Ct. 1171 (2024), stayed an election-year order that left Louisiana without any map. *See also Pierce*, 97 F.4th at 229 (applying *Purcell* where preliminary relief would require “discard[ing] completed ballots”). Reverting, in an off-cycle year, to the same map that governed North Carolina’s most recent elections does not present any of the same challenges. In fact, reverting to the status quo would promote *Purcell*’s objectives of “stability and sense of repose that engender trust and confidence in our elections.” *Id.* at 229.

CONCLUSION

The Court should preliminarily enjoin the use of S.B. 249 and order use of the 2023 Plan, pending resolution of claims heard at trial.

Dated: November 18, 2025

PATTERSON HARKAVY LLP

By: /s/ Narendra K. Ghosh
Narendra K. Ghosh, NC Bar No. 37649
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
nghosh@pathlaw.com

Counsel for Williams Plaintiffs

ELIAS LAW GROUP LLP

By: /s/ Lalitha D. Madduri
Lalitha D. Madduri*
Lucas Lallinger*
Qizhou Ge*
James J. Pinchak*
250 Massachusetts Ave., Suite 400
Washington, D.C. 20001
Phone: (202) 968-4490
Facsimile: (202) 968-4498
LMadduri@elias.law
LLallinger@elias.law
AGe@elias.law
JPinchak@elias.law

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

** 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 3,109 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
Lalitha D. Madduri

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
Lalitha D. Madduri